TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~348~~. 122

JOSEPH B. COFIELD, APPELLANT,

vs.

LOUISA McCLELLAND AND MARY DAVIS.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF COLORADO.

FILED OCTOBER 16, 1871.

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1 In the supreme court of Colorado Territory.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

At a stated term of the supreme court of Colorado Territory, begun and held at the city of Denver, in said Territory, on Tuesday, the twenty-sixth day of July, A. D. 1870, it being the first day of the regular term, A. D. 1869, of said supreme court, pursuant to law—

Present, Hon. Moses Hallett, chief justice, and Hon. Christian S. Eyster and Hon. James B. Belford, associate justices; Ward W. Denniston, deputy U. S. marshal; and David W. Crater, clerk—

Among other, the following proceedings were had, to wit:

JOSEPH B. COFIELD, APPELLANT,
vs.
LOUISA MCCLELLAN' AND MARY DAVIS, APPELLEES.

Appeal from district court of Arapahoe County.

2 Be it remembered that, heretofore, to wit, on the twenty-third day of July, A. D. 1870, the following transcript of record was filed in the office of the clerk of said supreme court, which said transcript of record is in words and figures following, to wit:

3 TERRITORY OF COLORADO,
Arapahoe County, ss:

Pleas in the district court of the first judicial district of Colorado Territory, in and for said county, before the Honorable Christian S. Eyster, associate justice of the supreme court of Colorado Territory, assigned to said judicial district at a term thereof began and held at the court-house in Denver, in said county, on the first Tuesday (it being the 4th day) of May, A. D. eighteen hundred and sixty-nine—Present, Honorable Christian S. Eyster, judge of said court; Henry A. Clough, clerk of said court; Vincent D. Markham, district attorney of said judicial district; and Richard Sopris, sheriff of said county.

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND AND MARY DAVIS. } Bill in chancery.

Be it remembered that, on the twenty-second day of April, A. D. eighteen hundred and sixty-nine, come the said plaintiffs, by Alfred Sayre, esq., his solicitor, and filed his bill on the chancery side of said court, which said bill is in words and figures as follows, to wit:

4 THE TERRITORY OF COLORADO,
Arapahoe County, ss:

In the district court of the first judicial district of the Territory of Colorado, within and for the county of Arapahoe, in chancery sitting, before the Honorable Christian S. Eyster, judge.

Your orator, Joseph B. Cofield, of the city of Denver, county of Arapa-

hoe, and Territory of Colorado, respectfully represents unto your honor that, heretofore, to wit, in the month of May, A. D. one thousand eight hundred and fifty-nine, a large number of persons associated together under the name of the Denver Town Company, had settled upon, surveyed, platted, and staked out in blocks, lots, streets, and alleys, and improved by building dwelling-house', stores, and other buildings thereon, and otherwise improved as a town site and for city purposes, a certain portion of the public domain of the United States subsequently and now known and described, according to its legal subdivission, as follows, viz, section number thirty-three (33) and the west half of section number thirty-four, in township number three (3) south, of range number sixty-eight (68) west of the sixth principal meridian, and in the Territory of
5 Colorado; and that a large population was, on the first day of June, A. D. one thousand eight hundred and fifty-nine, settled upon said lands and upon each legal subdivission of forty acres thereof, and had improved the same as a town site and for city purposes, and had designated the same as the city of Denver. Said improvements consisted of dwelling-houses, store and other buildings erected on each legal subdivission of forty acres of said lands, and of the improvements of the streets and alleys of said city, and whereby the said Denver Town Company acquired the legal right to the exclusive possession of said lands and an equitable title in and to the same, and the right, under the laws of the United States in such cases made and provided, to acquire legal title to said lands, and whereby the Denver Town Company then had the right, and the exclusive right, to sell, convey, and give away the equitable title to parcels of the same as city lots.

And your orator furthur represents that, after the said Denver Town Company had so settled upon, improved, and acquired the rights aforesaid to said lands, and before the first day of June, A. D. one thousand eight hundred and fifty-nine, one W. G. Preston, whose Christian name is otherwise to your orator unknown, with the full knowledge and at the instance and request of the said Denver Town Company,
6 erected, on a portion of said above-described lands and that portion now known as lot number six, (6,) in block number sixty-nine, (69,) in the east division of the city of Denver, in said county, a house of great value, to wit, of the value of one thousand dollars; that the said Preston afterwards, on the eighth day of June, A. D. one thousand eight hundred and fifty-nine, with the knowledge and consent of the said Denver Town Company, and for a valuable consideration, sold and delivered the said house to one Sylvester Hall, who then, with the consent and at the request of the said Denver Town Company, took possession of the said house, and was the bona-fide owner thereof.

And your orator furthur represents that, afterwards and some time prior to the fifth day of October, A. D. one thousand eight hundred and fifty-nine, by conveyance duly made and recorded in the records of said county, and which is to the said court here shown, the said Denver Town Company conveyed the said lot number six, (6,) in said block number sixty-nine, (69,) in the east division of said city, to the said Sylvester Hall.

And your orator furthur represents that, immediately after the said Sylvester Hall obtained the conveyance aforesaid from said Denver Town Company, he took possession of the said lot, and occupied
7 the house thereon from thence until after the passage of a certain act of Congress entitled "An act for the relief of the citizens of Denver, in the Territory of Colorado," approved on the twenty-eighth day of May, A. D. one thousand eight hundred and sixty-four; and so

your orator avers that, at the time of the passage and approval of said act of Congress, on the twenty-eight' day of May, A. D. one thousand eight hundred and sixty-four, and for a long time thereafter, the said Sylvester Hall was the rightful occupant of the said lot number six, (6,) in said block number sixty-nine, (69,) and was the bona-fida owner of the improvements thereon, and was then, and for a long time thereafter, to wit, until the fifth day of October, A. D. one thousand eight hundred and sixty-six, the equitable owner of said lot number six.

And your orator furthur represents unto your honor that, heretofore and on the sixth day of May, A. D. one thousand eight hundred and sixty-five, the Honorable James Hall, at that time the probate judge of the said county of Arapahoe, but now deceased, acting by virtue of the authority conferred upon him as such probate judge by the aforesaid act of Congress, did enter at the land office for the said district of Colorado at said city of Denver, the tract or parcel of land above
8 described, viz, section number thirty-three (33) and the west half of section number thirty-four, (34,) in township number three (3) south, of range number sixty-eight (68) west of the sixth principal meridian; and which said tract or pracel of land was entered by said probate judge in trust for the several use and benefit of the rightfull occupants of said lands and the bona-fide owners of the improvements thereon, according to their respective interests, according to the provisions of said act of Congress.

And your orator avers at the time of said entry of the said tract or parcels of land the said Sylvester Hall was the equitable owner and the rightful and actual occupant of a part of said tract or parcel of land, to wit, the said lot number six, (6,) in said block number sixty-nine, (69,) in the east divission of the city of Denver, and was the bona-fide owner of the said improvements thereon, and had the sole and exclusive right to receive from said probate judge as such trustee the legal title to said lot.

And your orator, furthur complaining, showeth unto your honor that one Lousia McClelland, of the city of Denver, in said county, (and whom your orator prays may be made a party defendant to this his bill of complaint, wrongfully intending to cheat and defraud the
9 said Sylvester Hall, and combining and confederating with the said James Hall, probate judge aforesaid, and the said James, combining and confederating with the said Lousia McClelland to cheat, wrong, and defraud the said Sylvester Hall out of his said lot, set up some pretended title to said lot to her, the said Lousia McClelland, the nature of which said title is wholly unknown to your orator, but which your orator charges was fraudulent and void, and that such proceedings were had by and before the said James Hall, probate judge, that, on the eleventh day of August, A. D. one thousand eight hnndred and sixty-five, the said James Hall, as such probate judge, conveyed the legal title to the said lot six, in said block sixty-nine, in said east division of said city, to the said Lousia McClelland, who then took unlawful and forcible possession of the same, and from thence hitherto has continued in the forcible and unlawful possession thereof.

And your orator furthur represents unto your honor that, afterwards, to wit, on the fifth day of October, A. D. one thousand eight hundred and sixty-six, the said Sylvester Hall, by good and sufficient deed
10 duly recorded in the county records of said county on the third day of November, the year last aforesaid, and which deed is to the court here shown, conveyed all his equity, right, and title, in and

to said lot number six, to one John Felter, of said city of Denver, who then became the rightful and sole owner thereof and rightfully entitled to occupy the same; and lawfully and in equity entitled to demand and receive the legal title thereto; and that the said John Felter afterwards, to wit, on the twenty-first day of February, A. D. one thousand eight hundred and sixty-seven, by good and sufficient deed, which is to the court here shown, conveyed all his equity, right, and title in and to said lot number six to one Joseph E. Bates, of said city of Denver, which said deed was afterwards, to wit, on the twenty-second day of the month and year aforesaid, duly recorded in the county records of said county of Arapahoe, whereby the said Joseph E. Bates then became the equitable and sole owner thereof, and rightfully entitled to occupy the same and justly and in equity entitled to demand and receive the
11 legal title to said lot number six; but your orator avers that, afterwards, to wit, on the twenty-second of May, A. D. one thousand eight hundred and sixty-seven, (the said Lousia McClelland, then unlawfully and fraudulently combining and confederating with one Mary Davis, of said city of Denver and county of Arapahoe, and whom your orator prays may be made a party defendant to this his bill of complaint, with intent then to injure and defraud the said Joseph E. Bates of
12 his rights and title in and to said lot, and the said Mary Davis then unlawfully and fraudulently combining and confederating with the said Lousia McClelland with like intent to cheat and defraud the said Joseph E. Bates of his rights and equity in and to said lot, the said Mary Davis then well knowing that the aforesaid conveyance of the said James Hall, probate judge, to said Lousia McClelland was fraudulent, and also then knowing the rights of the said Bates in and to said lot number six, the said Lousia McClelland did then, to wit, on the twenty-second day of the month and year last aforesaid, convey the said lot number six by deed of conveyance to the said Mary Davis, the said Mary Davis then well knowing that the said Lousia McClelland was not the rightful owner thereof, and well knowing the rights of the said Joseph E. Bates in and to the same.

And your orator further represents unto your honor that, afterwards, to wit, on the seventeenth day of April, A. D. one thousand eight hundred and sixty-nine, the said Joseph E. Bates, by good and sufficient deed of conveyance, which deed is here to the court shown, conveyed all his equity, right, and title in and to said lot number six to your orator, and which deed was, on the day and year last aforesaid, duly recorded in the county records of said county, whereby your orator then
13 became the sole and rightful owner thereof, and rightfully entitled to occupy the same, and in equity entitled to demand and receive the legal title thereto.

And your orator avers that no other conveyance of the said lot number six, except as set forth by him in this his bill of complaint, have ever, at any time, been made, and that your orator is now the equitable owner of said lot, and in equity entitled to demand and receive the legal title thereto.

All of which said actions and doings of the said Lousia McClelland and Mary Davis are contrary equity and good conscience; and all tend to the injury of your orator in the premises. In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this kind are properly cognizable and relievable: To this end, therefore, that the said Lousia McClelland

and Mary Davis, and each of them, may full, direct, and perfect answer make, according to the best of their information, knowledge, an' belief, to all and singular the matters and things aforesaid averred and charged, (but not under oath, your orator hereby waiving, pursuant to the statute, the necessity of said defendant answering under oath,) and
14 that as fully and particularly in every respect as if the same were here again repeated, and they thereunto particularly interrogated; and that, on the first hearing of this cause, the said Mary Davis may be decreed by this honorable court to convey the legal title to said lot number six, (6,) in the said block number sixty-nine, (69,) in the east division of said city of Denver, to your orator within a short day to be named in said decree; or, in default of such conveyance, then that one of masters in chancery of said court may be decreed to make such conveyance, and that your orator may have such other and furthur relief in the premises as equity and good conscience may require.

And may it please your honor to grant unto your orator a writ of chancery summons, issuing out of and under the seal of this honorable court, directed to the sheriff of said county of Arapahoe, commanding to summons the said Lousia McClelland and Mary Davis, defendants, to be and appear before your honor at the said court on the first day of the next term thereof, to be holden at Denver, in said county, on the first Tuesday of May next, and further to stand to, abide, and perform such order and decree therein as to your honor shall seem meet and proper; and your orator will ever pray, &c.

JOSEPH B. COFIELD,
By ALFRED SAYRE,
His Solicitor.

15 Upon which said bill was the following endorsement, to wit:

In chancery. District court Arapahoe County. Joseph B. Cofield vs. Lousia McClelland and Mary Davis. Bill in chancery. Filed April 22d, 1869. Henry A. Clough, clerk.

And thereupon a writ of chancery summons issued out of and under the seal of said court, which is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Arapahoe, ss:

The people of the Territory of Colorado to the sheriff of Arapahoe county, greeting:

We command you that you summon Lousia McClelland and Mary Davis, if they shall be found in your county, personally to be and appear before the district court of said Arapahoe County, on the first day of the next term thereof, to be holden at the court-house in Denver, in said Arapahoe County, on the first Tuesday of May, A. D. 1869, to answer unto Joseph B. Cofield, on a certain bill of complaint filed
16 in said court, on the chancery side thereof, to acquire title to real estate, &c.

And have you then and there this writ, with an endorsement thereon in what man'er you shall have executed the same.

Witness Henry A. Clough, clerk of our said court, and the seal thereof, at Denver aforesaid, this 22d day of April, A. D. 1869.

[SEAL.] HENRY A. CLOUGH, *Clerk.*

On which said writ was the following endorsement, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND ET AL.

TERRITORY OF COLORADO,
Arapahoe County:

APRIL 23D, 1869.

I have duly executed the within by reading the same to the within-named Lousia McClelland and Mary Davis, as I am therein commanded.

R. SOPRIS, *Sheriff*,
By W. W. DENISTON, *Deputy*.

17 Fees: Service, 3 00; mileage, .80; return ;—$3 80.
Filed in the district court this 24th day of April, 1869.
HENRY A. CLOUGH, *Clerk*.

And afterwards, to wit, on the thirtieth day of April, A. D. eighteen hundred and sixty-nine, came the said defendants, by Messrs. Geo. W. Perkins and Browne and Mechling, their solicitors, and filed in said court their separate answers, which said answers are in words and figures as follows:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND AND MARY DAVIS. } In chancery.

The seperate answer of Lousia McClelland, one of the aforesaid defendants, to the bill of complaint of Joseph B. Cofield, complain't.

This defendant now, and at all time' hereafter, saving to herself all and all manner of benefit or advantage of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties, and
18 imperfections in the said bill contained, for answer thereto, or so much thereof as this defendant is advised it is material or necessary for her to make answer to, answering, says:

That she admits that, heretofore, to wit, on the month of May, A. D. 1859, a large number of persons, associated together under the name of the Denver Town Company, had settled upon, surveyed, platted, and staked out in blocks, lots, streets, and alleys, and improved by building dwelling-house', store, and other buildings thereon, and otherwise improved as a town site and for city purposes, a certain portion of the public domain of the United States, subsequently and now known and described according to its legal subdivions, as follows, viz, section number thirty-three (33) and the west half of section number thirty-four, (34,) in township number three (3) south, of range number sixty-eight (68) west of the sixth (6) principal meridian, and in the Territory of Colorado, and that a large population was, on the first day of June A. D. one thousand eight hundred and fifty-nine, settled upon said lands, and upon each legal subdivision of forty acres thereof, and had improved the same as a town site and for city purposes, and had designated the same as
19 the city of Denver. Said improvements consisted of dwelling-house', stores, and other buildings erected on each legal subdivision of forty acres of said lands and of the improvements of streets and

alleys of said city, but she denies that thereby the said Denver Town Company acquired the legal right to the exclusive possession of said lands, or any interest therein, or title thereto.

This defendant, in furthur answering, says and admits that, heretofore, and on the sixth day of May, A. D. 1865, the Honorable James Hall, at that time the probate judge of the said county of Arapahoe, (but now deceased,) acting by virtue of the authority conferred upon him as such probate judge by an act of Congress entitled "An act for the relief of the citizens of Denver, in the Territory of Colorado," and the act of Congress to which said act was supplementary, did enter at the land office for said district of Colorado, said tracts or parcels of land hereinbefore described, and that said entry included lot (6,) six, in block sixty-nine, (69,) in said city of Denver, and was made for the benefit of the rightful occupants and the bona-fide owner' of the improvements thereon according to their respective interests.

20 This defendant, in furthur answering, denies that the said Sylvester Hall was in the actual or constructive possession of the said lot six, (6,) in block 69, in said city of Denver, east divission, on the said 28th day of May, A. D. 1864, or at any time after the 18th day of February, A. D. 1861, until the date of the commencement of this suit. Nor did the said Sylvester Hall, or any person claiming under him, at any time, from the said 28th day of May, A. D. 1864, until this date, have any dwelling-house or any other improvement of any kind whatever on said lot.

And this defendant, in furthur answering, admits they conveyance of said lot by the said Sylvester Hall to the said John Felter, on the said 5th day of October, A. D. 1866, and the conveyance by the said John Felter to the said Joseph E. Bates, on the said 21st day of February, A. D. 1867, and the conveyance by this defendant to the said Mary Davis, on the 22ond day of May, A. D. 1867, and also the conveyance by the said Bates to the complain't, on the 17th day of April, A. D. 1869; and this defendant answers and says that the said conveyance by the said Hall to the said Felter was made without consideration, and that the said Felter then well knew that this defendant was the legal owner of said lot and was in the actual possession thereof, holding the legal title thereto in fee-simple; that the said conveyance

21 to the said Bates was made upon an inadequat' consideration, and with full knowledge on his part that this defendant was the owner thereof, as aforesaid, and in the actual occupancy thereof, and that the said Joseph B. Cofield received said deed from the said Bates with a like knowledge of all of said facts; he, the said Cofield, only having paid for said lot the sum of one thousand dollars when said property was worth the sum of six thousand dollars.

This defendant, in furthur answering, says that, on the said 18th day of February, A. D. 1861, the said Sylvester Hall was not a resident of the said city of Denver, nor was he a resident of said city on the said 28th day of May, A. D. 1864. And this defendant denies that the said Hall was, on the day and year last aforesaid, the owner of any improvements on the said lot hereinbefore described, but on the contrary, this defendant avers that she was the bona-fide owner of a dwelling-house then standing on said lot and in the actual occupancy thereof, and that said dwelling-house was the only improvement thereon, and which dwelling-house she had placed on said lot with her own means, and at her own expense.

22 This defendant, in further answering, says that, on the 4th day of March, A. D. 1862, the said lot was entirely vacant and

wholly without improvements of any kind whatever, and that thereupon, on the day and year last aforesaid, she took possession thereof, and immediately erected thereon the dwelling-house aforesaid, of the value of five hundred dollars, and that she continued in the actual occupancy of said lot and dwelling from that time until the said 22ond day of May, A. D. 1867, when she conveyed the same to her mother, the said Mary Davis, in good faith; and that during all of said time she paid the taxes assessed against said property without the knowledge of any claim thereto by the said Hall or any other person.

And this defendant admits that, on the said eleventh day of August, A. D. 1865, the said James Hall, as probate judge and trustee as aforesaid, conveyed the legal title to the said lot six, in block (69,) sixty-nine, in the east division of said city of Denver, to this defendant, but denies that she combined and confederated with the said James Hall, or that he conspired an' confederated with her to cheat, wrong, and defraud the said Sylvester Hall; but that this defendants was, on the day and year last aforesaid, and from the said 4th day of March, A. D.
23 1862 had been, in the actual possession of said lot, and during all of said period had been the bona-fide owner of all of the improvements thereon, and that said deed conveying the said legal title was made in good faith, and without any knowledge on the part of this defendant of any adverse claim of title thereto in favor of the said Sylvester Hall, or any other persons whatever.

And this defendant denies all and all manner of unlawful combinations and confederacy w'erewith she is by the said bill charged, without this, that there is any other matter, cause, or things material'y or necessary for this defendant, in the said bill contained, to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver and prove as this honorable court shall direct; and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

LOUSIA McCLELLAND.

GEO. W. PERKINS,
BROWNE & MECHLING,
Solic. for Def't.

24 JOSEPH B. COFIELD
vs.
LOUSIA McCLELLAND AND MARY DAVIS. } In chancery.

The separate answer of Mary Davis, one of the aforesaid defendants, to the bill of complaint of Joseph B. Cofield, complainant.

This defendant and respondent, now, and at all times hereafter, saving to herself all and all man'er of benefit and advantage, of *re*ception or otherwise, that can or may be had or taken to the many errors, imperfections, and uncertainties in the said bill contained, for answer thereto, or to so much thereof as she is advised is material for her to answer, answering, says: That as to all the charges, statements, allegations, in said bill contained, from the beginning of the same, down to the allegations of the conveyance of the title to lot six, in block sixty-nine, in Denver City, by her codefendant, Lousia McClelland, to this defendant, she is totally ignorant w'ether the bill be true or false, and cannot answer thereto, except so far as to state that her codefendant

and herself occupied said lot from some time in the spring of
25 1862 down to the present time, and this respondent never knew or heard of any adverse claimant thereto; that, on the 22ond of May, 1869, her daughter, Lousia McClelland, for a good consideration, conveyed the said lot to her, and this respondent believed that she was entitled to the same, both in law and equity.

Respondent, further answering, says that as to all other matters in said bill of complaint, that she has heard the answer of Lousia McClelland, made to said bill of complaint, and begs leave to adopt the same, so far as the same is appropriate, with the total want of information she has on the subject. And, having thus answered, she prays to be hence dismissed with her costs, &c.

her
MARY + DAVIS.
mark.

GEO. W. PERKINS,
S. E. BROWNE,
Counsel & Solicitors.

And afterwards, to wit, on the sixth day of May, A. D. eighteen hundred and sixty-nine, the same being one of the regular days of said May term of said court, the following proceeedings were had and entered of records in said cause in said court, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND ET AL. } In chancery.

26 Now, on this day, comes the said complainant, by Messrs. Alfred Sayre and Daniel Sayre, his solicitors, and the said defendants, by Messrs. Browne and Meckling, their solicitors; and thereupon, on motion of the said defendants' solicitors, said complainant was ruled to reply or except to the answer of said defendants in ten days from this date.

And afterwards, to wit, on the eleventh day of May, A. D. eighteen hundred and sixty-nine, comes the said complainant and files in said court his replication to the several answers of the said defendants, which said replication is in words and figures as follows, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND AND MARY DAVIS. } In chancery.

The replication of Joseph B. Cofield, complain't to the several answers of Lousia McClelland and Mary Davis, defendants, to the said complainant's bill of complaint.

This repliant, saving and reserving unto himself all and all
27 manner of advantake of exceptions to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in law, to be answered unto; and that the said answer' of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant; without this, any other matter or things whatsoever in said answers contained, material or effectual in law, to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court

shall direct; and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH B. COFIELD.

ALFRED SAYRE,
Sol for Comp't.

And afterwards, to wit, on the 22d day of May, A. D. eighteen hundred and sixty-nine, the same being still of the May term of said court, the following proceedings were had entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND ET AL. } In chancery.

28 Now, on this day comes the said complainant, by Messrs. A. and D. Sayre, his solicitors; and the said defendants, by Messrs. Browne and Meckling, and George W. Perkins, their solicitors, also come. And thereupon, by consent of parties, and on motion of said complainant's solicitors, it is ordered that this cause be referred to John W. Webester, esq., master in chancery of this court, to take proof on the state of pleadings between said complainant and said defendants, and that the said master report the same to this court with all convenient speed.

And afterwards, to wit, on the first day of September, A. D. eighteen hundred and sixty-nine, comes the said complainant, by Alfred Sayre and D. Belden, his solicitors, and files in said court notice to take depositions of William Larimer, jr., and interrogations, which said notice and interrogations are in words and figures as follows, to wit:

THE TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district, sitting in chancery, within and for the county of Arapahoe, and Territory of Col-
29 orado. To the May term, 1869.

JOSEPH B. COFIELD, COMP'T,
vs.
LOUSIA MCCLELLAND AND MARY DAVIS, RE- } Chancery.
spondents.

The above-named respondants are hereby notified that, on the first day of September, A. D. one thousand eight hundred and sixty-nine, I will sue out of the office of the clerk of the district court of the first judicial district in and for the Territory of Colorado, and county of Arapahoe, a dedimus protestatim or commission, to be directed to Joseph Kellogg, esq., of the city and county of Leavenworth, in the State of Kansas, commissioner, to take the deposition of William Larimer, jr., of said county of Leavenworth, and State of Kansas, to be used as evidence on the trial of the above-entitled cause, now pending and undetermined in said district court of the first judicial district of Colorado Territory, in and for said county of Arapahoe, on the chancery side thereof, and that a copy of the interrogations hereto attached, will be appended to the said dedimus protestations or commission, to be propounded
30 to the said witness on the part and in behalf of the said com-

plainant, and you will file cross-inter'ogations, and join in said commissions if you see fit.

JOSEPH B. COFIELD,
By A. SAYRE & D. D. BELDEN,
His Solicitors.

To SAMUEL E. BROWNE & GEO. W. PERKINS,
Solicitors for Respondents.

AUG. 18, 1869.

We acknowledge due service of the above notice on the above-named respondents this day by copy of the same, together with a copy of the interrogations hereto attached, delivered to us.

BROWNE & MECKLING,
Sol's for Def'ts.

THE TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of the Territory of Colorado, in chancery sitting, in and for the county of Arapahoe. To the May term, 1869.

Interrogatories to be propounded to William Larimer, jr., a witness to be produced, sworn, and examined, under and by virtue of
31 the dedimus protestations or commission, to be issued in pursuance of the annexed notice.

First. What is your name, age, occupation, and place of residence?

Second. Do you know the parties, complainants and respondents, in this cause, or either of them, and which of them, and how long have you known them respectively?

Third. State w'ether or not you ever lived in the city of Denver, in the Territory of Colorado; and if you answer that you have lived in said city, state how long you lived there, and about what time you left there?

Fourth. State w'ether or not you have any knowledge of lot number six, (6,) in block number sixty-nine, (69,) in the east division of the city of Denver, in the Territory of Colorado; if you answer that you do know said lot, you will please state how long you have known said lot, and state w'ether there were at the time you knew said lot any improvements on the same?

Fifth. If in your answer to interrogatory number four, you
32 answer that there were improvements on said lot of any kind, you will please state what they were; and, if you know, who made said improvements, and when such improvements were made, and how long said improvements remained on said lot, and by whose authority were said improvements removed?

Sixth. State w'ether, at any time, you exercised acts of control over said lot; and if you answer that you have, state when it was, and for how long a period of time you did so, and in what capacity, and for whom you acted at the time.

Seventh. If, in you' answer to interrogations numbers five and six, you answer that there was a house on said lot, and that you acted as agent for Sylvester Hall in renting said house and lot, you will please state how long you acted as such agent, and how often you rented said house and lot, and state to what persons you rented the same.

Eighth. Do you know any other matter and things touching the matter in controversy in this cause that may tend to the advantage of the com-

plainant, in addition to what you have already stated; if you do,
33 state the same as fully and at large as if you had been particularly interrogated in reference thereto.

JOSEPH B. COFIELD,
By A. SAYRE AND D. D. BELDEN,
Solicitors for Comp't.

Cross-interrogations.

No. 1. When did you last see Sylvester Hall in Denver?
No. 2. Between what two streets which cross Larimer st. is said lot six situated?
No. 3. Was Sylvester Hall ever in Denver City after Feb'y 15th, 1860?
No. 4. If you say you had any authority from said Hall to possess said lot was that authority in writing; if so, where is it?

And thereupon a dedimus protestation or commission was issued out of said court, directed to Joseph Kellogg, esq., of the city of Leavenworth, in the State of Kansas, which said dedimus protestatum is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
Arapahoe County, ss:

The people of the Territory of Colorado to Joseph Kellogg, of the
34 city and county of Leavenworth, in the State of Kansas, greeting:

Whereas it has been represented to us that William Larimer, junior, material witness in a certain cause now pending in our district court for the first judicial district of Colorado Territory in and for the county of Arapahoe, wherein Joseph B. Cofield is plaintiff, and Lousia McClelland and Mary Davis are defendants, and that the said witness resides at Leavenworth, Kansas, aforesaid, without the said Territory of Colorado, and that his personal attendance cannot be procured at the trial of the said cause:

Now, know ye, that we, in confidence of your prudence and fidelity, have appointed, and by these presents do appoint, you commissioner to examine the said witness, and do, therefor, authorize and require you to cause the said witness to come before you at such time and place as you may therefor designate and appoint, and diligently to examine the said witness on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the depositions of the said witness upon all interrogations and cross-interrogations inclosed with or attached to these presents, both on the part of the said plaintiff and the said defendants, and none others; and the same, when
35 thus taken, together with this commission and the said interrogatories, to certify into our said district court with the least possible delay.

Witness Henry A. Clough, clerk of said district court, and the seal thereof, at Denver City, in said county and Territory, this 1st day of September, A. D. 1869.

[SEAL.] HENRY A. CLOUGH, *Clerk.*

And aftewards, to wit, on the eleventh day of October, A. D. eighteen hundred and sixty-nine, the same being one of the days of the October term of said court, A. D. eighteen hundred and sixty-nine—there being

present the Hon. Christian S. Eyster, judge of said court; Henry A. Clough, esq., clerk of said court; Vincent D. Markham, esq., district attorney of said judicial district; and David J. Cook, esq., sheriff of said county—the following proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND. } Chancery.

Now, on this comes the said complainant, by Messrs. A. &
36 D. Sayre, his solicitors; and the said defendants, by Messrs. Perkins & Browne, their solicitors, also come; and, on the motion of solicitors for complainant, the time for the master to make his report in this cause is extended to twenty days from this date.

And afterwards, to wit, on the nineteenth day of October, A. D. eighteen hundred and sixty-nine, the deposition of William Larimer, jr., was opened, published, and filed in said court in said cause, which said deposition is in words and figures as follows, to wit:

The deposition of William Larimer, jr., of the county of Leavenworth and State of Kansas, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the thirteenth day of September, A. D. 1869, at my office, in the city of Leavenworth, in the county of Leavenworth, and State aforesaid, by me, Jos. Kellogg, a commissioner duly appointed by a dedimus potestatum issued out of the clerk's office of the district court of Arapahoe County, in the Territory of Colorado, bearing teste in the name of Henry A. Clough, esq., clerk of the said district court, and the seal of the said court affixed
37 thereto, and to me directed as such commissioner for the examination of the said William Larimer, jr., witness in a certain suit and matter in controversy now pending and undetermined in the said district court for the first judicial district of Colorado Territory in and for the county of Arapahoe, wherein Joseph B. Cofield is complainant, and Lousia McClelland and Mary Davis are respondents, in behalf of the said Joseph B. Cofield, plaintiff, as well upon the cross-interrogations of the defendants Lousia McClelland and Mary Davis, as upon the interrogations of the plaintiff, Joseph B. Cofield, which were attached to, or included with, the said commission, and upon none others.

The said WILLIAM LARIMER, jr., being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendants, in relation to the matters in controversy between the said plaintiff and defendants, so far as he should be interrogated, testified and deposed as follows:

Interrogatory first. What is your name, age, occupation, and place of residence?

38 Answer. My name is William Larimer, jr.; my age is forty-nine; I am a farmer, and reside in Leavenworth County, in the State of Kansas.

Interrogatory second. Do you know the parties, complainant and respondents, in this cause, or either of them, and which of them, and how long have you known them respectively?

Answer. I do not know the parties, complainant and respondent, or either of them.

Interrogatory third. State w'ether or not you ever lived in the city of Denver, in the Territory of Colorado; and if you answer that you have lived in said city, state how long you lived there, and about what time you left there.

Witness states that he has lived in the city of Denver, in the Territory of Colorado, and that he was one of the first settlers in said city, going there in November, A. D. 1858, & living there between two and three years, and leaving there in the latter part of the year, A D. 1861, (eighteen hundred and sixty-one.)

Interrogatory fourth. State w'ether or not you have any knowl-
39 edge of lot number six, (6,) in block number sixty-nine, (69,) in the east division of the city of Denver, in the Territory of Colorado. If your answer that you do know said lot, you will please state how long you have known said lot, and state w'ether there were, at the time you knew said lot, any improvements on the same.

Answer. Witness knew said lot number six, (6,) in block number sixty-nine, (69,) in the east division of the city of Denver, in the Territory of Colorado, and he knew said lot from before June, A. D. 1859, and that there was about that time a hewed-log house on said lot.

Interrogatory fifth. If, in you' answer to interrogatory number four, you answer that there were improvements on said lot of any kind, you will please state what they were, and, if you know, who made said improvements, and when such improvements were made, and how long said improvements remained on said lot, and by whose authority were said improvements removed.

Answer. Witness states that said improvements were a hewed-log house, and were made by W. G. Preston, in the spring of A. D.
40 1859, and they remained on said lot as long as he remained in the city of Denver aforesaid. He made Charles G. Cheever his general agent after he lef' the county, and he does not know, only by hearsay, w'ether said improvements were removed after he left or not.

Interrogatory sixth. State w'ether at any time, you exercised acts of control over said lot, and if you answer that you have, state when it was, and for how long a period of time you did so, and in what capacity, and for whom you acted at the time.

Answer. Witness did exercise acts of control over said lot from June 8th, 1859, until he left the county, about three years after or some less, as the agent of Sylvester Hall, in renting said house and lot.

Interrogatory seventh. If, in your answer to interrogatories number five and six, you answer that there was a house on said lot, and that you acted as agent for Sylvester Hall in renting said house and lot, you will please state how long you acted as such agent, and how often you rented said house and lot, and state to what persons you rented the same.

41 Answer. Witness acted as such agent between two and three years, and he rented said house and lot, at three different times, to three different parties. The first time to a man who came to Denver City to winter, but he does not remember his name. The second time he rented the house & lot to a German who manufactured vinegar, but he does not remember his name. The third time he rented the house & lot to a carpenter, named Asher or some such name. A part of the time he acted a' agent the property stood idle.

Interrogatory eight. Do you know any other matter or things touching the matter in controversy in this cause that may tend to the advant-

age of the complainant, in addition to what you have already stated? If you do, state the same as fully and at large as if you had been particularly interrogated in reference thereto.

Answer. The witness states that he does not know any other matter touching the matter in controversy in this cause that would tend to the advantage of the complainant.

42 Cross-interrogations and answers thereto by the witness on the part of the *plaintiff*:

Cross-interrogatory first. When did you last see Sylvester Hall in Denver?

Answer. Witness last saw Sylvester Hall, in Denver, in June, A. D. 1859.

Cross-interrogatory No. 2. Between what two streets, which cross Larimer st., is said lot six situated?

Answer. Between G and F streets, near the old Dick Whitset corner, south side of Larimer street.

Cross-interrogatory No 3. Was Sylvester Hall ever in Denver City, after Feb'y 15th, 1860?

Answer. Not to the witness' knowledge.

Cross-interrogatory No. 4. If you say you had any authority from said Hall to possess said lot, was that authority in writing; & if so, where is it?

43 Answer. Witness does not know or recollect that he had any written authority from said Hall until he commenced to sell lots for said Hall; then he had a power of attorney, which is on record in said city of Denver. He knows of no other written authority.

W'M LARIMER, J'R.

I, Jos. Kellogg, of the city of Leavenworth, in the county of Leavenworth, and State of Kansas, a commissioner duly appointed to take the deposition of the said William Larimer, j'r, a witness whose name is subscribed to the foregoing deposition, do hereby certify that, previous to the commencement of the examination of the said William Larimer, j'r, as witness in the said suit between the said Joseph B. Cofield, as plaintiff, and Lousia McClelland and Mary Davis, as defendants, he was duly sworn by me to testify the truth in relation to the matters in controversy betwee' the said party, so far as he should be interrogated concerning the same; that the said deposition was taken by me, Jos. Kellogg, and reduced to writing by me, Jos. Kellogg, at my office, in the city of Leavenworth, in the county of Leavenworth, and State of Kansas, on the 13th day of September, A. D. 1869, and that after said deposition was taken by me, as aforesaid, the interrogationes and
44 answers thereto as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponant William Larimer, j'r, before me, at the place and on the day and year last aforesaid.

JOS. KELLOGG,
Commissioner.

And afterwards, to wit, on the twelfth day of November, A. D. eighteen hundred and sixty-nine, comes John W. Webster, esq., master in chancery of said court, and files herein his report of the evidence taken in said cause, which said report is in words and figures as follows, to wit:

In the district court of the first judicial district of the Territory of Colorado, within & for the county of Arapahoe. To the May term, A. D. 1869.

JOSEPH B. COFIELD
vs.
LOUISA MCCLELLAND & MARY DAVICE.

Depositions and proofs taken this twenty-third day of August, A. D. one thousand eight hundred and sixty-nine, in the above-entitled cause, on the part and behalf of the complainant, before John W. Webster, one of the masters in chancery of this court.

Hon. D. D. Belden appears as counsel for the complainant, and
45 Hon's L. E. Browne & Geo. W. Perkins appear as counsel for defendant.

WILLIAM J. HARDIN, a witness produced, was duly sworn by said master, and on being orally examined by counsel, deposeth and testifies as follows:

Interrogatory 1st. What is your name, age, place of residence, and occupation?

Answer 1st. My name is William J. Hardin; my age is thirty-seven years; my place of residence is in Denver, in the county of Arapahoe, and Territory of Colorado; my occupation is barber.

Interrogatory 2. Do you know the parties, complainant and defendants, in this cause, or either of them, and how long have you known them, respectively.

Answer 2. I have known them all for a number of years.

Interrogatory 3. State whether or not you have any knowledge of lot number, (6,) in block sixty-nine, (69,) in the city of Denver, Arapahoe County, Colorado Territory. If you answer that you do know said lot, you will please state how long you have known said lot.

(Objected to by counsel for defendants.)

46 Answer 3. I have; I did business close to the lot in the spring of 1864, and remained there until November, of 1864.

Interrogatory 4. State if you know w'ether there were any improvements on said lot when you first knew it.

Answer 4. As well as I can reccollect there was an old pioneer log-cabin on the lots. The cabin stood where those lots are marked, but I did not know the number of the lots at the time.

Interrogatory 5. State w'ether you know the house that Mrs. McClelland, the defendants, now lives in. If you answer that you do know said house, state, if you can, where the old log-cabin, you speak of, in your answer number four, stood *or* relates to the house where Mrs. McClelland now lives. Was or was not the log-cabin on the same lot that Mrs. McClelland now occupies?

Answer 5. I know the house w'ere Mrs. McClelland now lives; I can only answer that, by its relative position to the cabin that John
47 Butler used to occupy, this cabin stood nearer to Butler's than to the other cabin occupied as a carpenter's shop. Judging as near as I can, it must have stood on or near the identical spot that Mrs. McClelland' house now occupies, and where she now lives. The space between this cabin and the carpenter's shop northeast of it, was much greater than the space between this log-cabin and the cabin occupied by Butler on the southwest.

Interrogatory 6. State, if you know, how long the old pioneer log-cabin, between the two buildings you name, remained there in the position you have described; and state, if you know, who took it away, and when it was taken away.

Answer 6. It was standing there in the spring of 1864, when I first occupied Landulin's barber shop; it was afterwards torn town, but when I cannot say positively, w'ether in the fall of 1864 or 1865, I cannot tell which, but I do not know who took it away.

Interrogatory 7. State, if you know, when Mrs. McClelland, and one of the respondents, put the house she now occupies on the place it now stands.

48 Answer 7. I can recollect that the front improvement on said house was put up in the fall of sixty-five; there was a new front with doors and windows and porch floor. I cannot state when the main part of the building or improvements was put on said lot.

Cross-examined by solicitors for defendants:

Cross-interrogatory 1. Do you pretend to state with any degree of certainty that the log-cabin which you say was subsequently torn down, did or did not stand on lot six (6)?

Answer 1. From my recollection of the relative position of the two cabins, I think that the log-cabin stood—*on* a part of it at any rate—on lot six (6.)

W'M J. HARDIN.

Subscribed and sworn to before me this 23d day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The further taking of testimony is hereby adjourned until two o'clock, p. m., this 23d day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

49 In pursuance to the foregoing adjournment the taking of testimony is resumed at two o'clock, p. m., this 23d day of August, A. D. 1869—present, Hon. D. D. Belden, solicitors for complainant, Hon. S. E. Brown, solicitors for defendants.

JOHN M. BUTLER, a witness, was duly sworn by said master, and, on being orally examined by counsel, deposeth and testifies and follows:

Interrogatory 1. What is your name, age, place of residence, and occupation.

Answer 1. My name is John M. Butler; my age is thirty-nine years; my place of residence is Denver, county of Arapahoe *County*, and Territory of Colorado; my occupation is tailor at present.

Interrogatory 2. Do you know the parties, complainant and respondents, in this cause, or either of them, and how long have you known them respectively?

Answer 2. I have known the complainant three or four years, and the respondents for more than twenty years.

Interrogatory 3. State w'ether or not you are acquainted with
50 lot six, (6,) in block sixty-nine, (69,) in the city of Denver, east divission.

Answer 3. I am not; I cannot state where it is.

Interrogatory 4. State whether you are acquainted with the lot on

Larimer street, in the city of Denver, east division, where the respondents now reside; if so, how long have you been acquainted with said lot?

Answer 4. I have known that lot since the year 1860, to the best of my knowledge.

Interrogatory 5. State what improvements, if any, were on said lot when you first knew it.

Answer 5. I did not see any improvements on it at that time, nor up to the year 1863.

Interrogatory 6. State w'ether or not you ever knew an old log-cabin, which stood in the vicinity of the place where Mrs. McClelland now resides; and if so, where was it and who occupied it.

Answer 6. I knew an old log-cabin there in that vicinity; it was kept by a Dutchman, in the fall of 1860, by the name of Will. something. I cannot recollect. It was occupied as a liquor saloon and
51 vinegar factory.

Interrogatory 7. State w'ether you ever occupied said log building for any purpose; if so, for what purpose and when was it.

Answer 7. I have occupied the said log building. It was the 19th day of the month of May, 1864. I took my horses there and occupied it as a stable for much as two weeks after the 19th of May, 1864—immediately after the flood of that year.

Interrogatory 8. State, if you know, what became of said log building.

Answer 8. It was torn down and taken away by somebody; I do not know by whom.

Interrogatory 9. State, as near as you can, when it was taken down and removed.

Answer 9. It was taken down in the summer of 1864, in about the month of June or July, 1864.

Cross-examined by solicitors for respondents:

Cross-interrogatory 1. When, to your knowledge, did the defendants, Lousia McClelland and Mary Davis, first reside on the premises on which they now reside?

52 Answer 1. I believe it was in the fall of 1864; they lived on the back end of the lot next to the one they now live on in 1862.

Cross-interrogatory 2. Was not the log-cabin which was torn down, and of which you have spoken, located upon a part of the ground now occupied by Cole's block, to the best of your knowledge?

Answer 2. I cannot state.

Cross-interrogatory 3. At the time of the Indian scare, the 15th of August, 1864, where did Mrs. McClelland live?

Answer 3. Just where she does now.

Cross-interrogatory 4. State w'ether there was any house on the ground now occupied by her dwelling from the year 1860, when you first knew it, until she built or put the house there in which she now lives.

Answer 4. I do not know.

Cross-interrogatory 5. Was Joseph C. Davidson living with her in August, 1864, or boarding at her house.

Answer 5. I do not know.

JOHN M. BUTLER.

53 Subscribed and sworn to before me this 23d day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

LUTHER A. COLE, a witness produced, was duly sworn by said master, and, on being orally examined by counsel, deposeth and testifies as follows:

Interrogatory 1. What is your name, age, place of residence?

Answer 1. My name is Luther A. Cole; my age is fifty-six years; my residence is in Watertown, county of Jefferson, State of Wisconsin.

Interrogatory 2. Do you know the parties, complainant and respondents, in this cause, or either of them, and how long have you known them respectively?

Answer 2. I have known Mr. Cofield about three years, and the respondents about one year.

Interrogatory 3. State w'ether you have any knowledge of lot number six, (6,) in block number sixty-nine, (69,) in the east division of the city of Denver; if so, state how long you have known it.

54 Answer 3. In the year 1859 I bought lots seven (7) and eight, (8,) in block sixty-nine, (69,); there was a log building on lot eight, (8,) and also, about twenty-five feet from lot eight, was a log building on lot six, (6,) in block sixty-nine, (69); I was here in 1859 and 1860, and saw it then.

Interrogatory 4. State w'ether the house on said lot six (6) was occupied in 1859 & 1860; if so, for what purpose was it occupied?

Answer 4. I saw people about there, and supposed there was a family or persons living it, but do not know for certain.

Cross-examined by solicitors for respondents:

Cross-interrogatory 1. When, after 1860, were you next in Denver?

Answer. In the months May and June, in the year 1862.

Cross-interrogatory 2. Was there any log building standing on lot six, (6,) in block sixty-nine, (69,) at that time?

Answer 2. I cannot state positively.

55 Cross-interrogatory 3. When did you next visit Denver, after the year 1862?

Answer 3. In the month of August, 1866.

LUTHER A. COLE.

Subscribed and sworn to before me this 23d day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

SAMUEL H. BOWMAN, a witness produced, was duly sworn by said master, and, on being orally examined by counsel, deposeth and testifies as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is Samuel H. Bowman; my age, twenty-five years; my residence is in the city of Denver, in the county of Arapahoe, and Territory of Colorado.

Interrogatory 2. Do you know the parties, complainant and respondents, in this cause, or either of them, and how long you know' them respectively?

56 Answer 2. I have known Mr. Cofield, the complainant, about three years, and the respondents about four years.

Interrogatory 3. State what, if any, knowledge you have of lot six (6) in block sixty-nine, (69,) in the east division of the city of Denver; and if you know the lot, state how long you have known it.

Answer 3. I have known the lot northeast and adjoining Cole's block since the year 1859.

Interrogatory 4. State, if you know, w'ether there were any improvements on the lot northeast & adjoining Cole's block at the time you first knew the lot; and if so, described them.

Answer 4. If I remember correctly there was a small log-house on it, with a door in the centre and one windo' in the front part of the house.

Interrogatory 5. State w'ether said building was occupied for any purpose, and by whom; for what purpose, and how long.

Answer 5. The first recollection I have was that Mr. Ashard occupied said building as a carpenter's shop—I think it was in the year
57 1861; and upon reflection there was a building standing where Cole's block now stands, which was the building that Mr. Ashard so occupied, but was not on the street.

Interrogatory 6. State w'ether the building on said lot six, (6,) next northeast of the Ashard building you have mentioned, was occupied for any purpose, and by whom and when was it?

Answer 6. It was occupied by Will and somebody else as a liquor store in the year 1860.

Interrogatory 7. How far away and in what direction was the last-named building, occupied by Will, from the building occupied by Ashard as a carpenter's shop?

Answer 7. Northeast toward G street, I think from twenty thirty-five ; I cannot state exactly.

Cross-examined by solicitors of respondents:

Cross-interrogatory 1. Are you positive as to which lot, number six (6) or number seven, (7,) the log building occupied by Will and another, as a liquor store, stood on?

Answer 1. I do not know the lot by the number.

58 Cross-interrogatory 2. Are you positive that said building stood on the same lot now occupied by Mrs. McClelland?

Answer 2. I cannot state positively.

S. H. BOWMAN.

Subscribed and sworn to before me this 23d day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

CHARLES G. CHEEVER, a witness produced, was duly sworn by said master and on being orally examined by counsel, deposeth and testifies as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. Charles G. Cheever; my age, forty-one years; my residence is in the city of Denver, county of Arapahoe, and Territory of Colorado.

Interrogatory 2. Do you know the parties, complainant and respondents, in this cause, or either of them, and how long have you known them respectively?

Answer 2. I do know the parties in this cause; I have known
59 the complainant since 1864, and the respondents several years.

Interrogatory 3. State w'ether or not you have any knowledge of lot six (6) in block sixty-nine, (69,) east division of the city of Denver; and if so, how long have you known said lot.

Answer 3. I know lot six (6) in block sixty-nine, (69,) from the fact

that I own lot five (5) which it adjoins in said block; have known it since I was elected to the office of recorder in December, 1861.

Interrogatory 4. State w'ether or not there were any improvements on said lot six (6) at the time you became acquainted with it in 1861; and if so, describe said improvements.

Answer. There was a log-cabin upon the premises, known as the Jefferson saloon—door open on the front.

Interrogatory 5. State if you know about how long that building remained there.

Answer 5. I am positive that the building remained there up to the month of October, 1864. I do not know at what time the building was removed nor by whom.

60 Interrogatory 6. State w'ether or not lot six in block sixty-nine (69) was occupied other than by the Jefferson Saloon building prior to September, 1865.

Answer 6. I have never *saw* any other improvements upon said lot prior to that date excepting the cabin in question.

Interrogatory 7. When was the building now occupied by Mrs. McClelland placed on that lot, according to your best recollection?

Answer 7. In the spring of 1866.

Cross-examined by solicitors for respondents:

Cross-interrogatory 1. Was the saloon building you have spoken of ever occupied for any purpose after the year 1861?

Answer 1. I do not know that it was.

CHA'S G. CHE'VER.

Subscribed and sworn to before me this 23d day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

61 The taking of testimony is hereby adjourned until nine o'clock a. m., the twenty-fourth day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

Pursuant to adjournment, the taking of testimony was resumed at nine o'clock a. m., on the twenty-fourth day of August, A. D. 1869, at my office in Denver.

JOHN W. WEBSTER,
Master in Chancery.

ISAAC L. MCCOWNICK, a witness produced, was duly sworn by said master, and, on being orally examined by counsel, testifies as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is Isaac L. McCownick; my age is thirty-four years; my residence is Denver City, Arapahoe County, Colorado Territory.

Interrogatory 2. Do you know the parties, complainant and respondents, in this cause or either of them and how long have you known them respectively?

Answer 2. I have known all the parties for a number of years.

62 Interrogatory 3. State w'ether you knew the building forme'ly occupied by Ashard as a carpenter's shop on Larimer street, in the east division of Denver City, and w'ether you knew the log building

northeast of the last-named building, which was at one time occupied by Will and another as a liquor store or saloon. If you did know both of said buildings, you will please state what was the distance between said buildings.

Answer 3. I did know both buildings; according to my best reccollection, it was about twenty-five feet between the two buildings.

Interrogatory 4. If you know state what was the distance between the building occupied as a carpenter shop by Ashard and the building on lot number ten, (10,) occupied at the present time as a confect'onary store.

Answer 4. I cannot state positively, but should think about twenty feet. I worked and handled lumber between the two buildings.

Interrogatory 5. State if you know w'ether the building know' as the Jefferson Saloon, next northeast of Ashard' shop, was ever occupied by any one; and if so, by whom and when was it, and how long did they occupy it?

63 Answer 5. I cannot state positively.

Interrogatory 6. State when the Jefferson Saloon building was torn down and removed, if you know.

Answer 6. It was torn down in the fall of 1864.

Cross-examined by solicitors for respondents:

Cross-interrogatory 1. State if said building, known as the Jefferson Saloon, was torn down *down* at the time the Chivington fortification' were made or afterwards.

Answer 1. I think afterwards, late in the fall.

I. L. McCOWNICK.

Subscribed and sworn to before me, this 24th day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

RICHARD E. WHITSITT, a witness produced, was duly sworn by said master, and, on being orally examined, deposes and testifies as follows:

Interrogatory 1. What is your name, age, and place of residence?

64 Answer 1. My name is Richard E. Whitsitt; my age, forty years; residence, Denver City, county of Arapahoe, Territory of Colorado.

Interrogatory 2. Do you know the parties, complainant and respondents in this cause, or either of them; and how long have you known them respectively?

Answer 2. I have known the complainant for a number of years, and Lousia McClelland, one of the respondents, for several years; cannot say that I know Mary Davis, respondent.

Interrogatory 3. State w'ether or not you have any knowledge of lot number six, (6,) in block sixty-nine, (69,) in the east divission of the city of Denver, Arapahoe County, Colorado Territory; if you state that you do know said lot, you will please state how long you have known said lot.

Answer 3. I have known said lot six (6) in block sixty-nine, (69,) east divission, since the town was platted in 1859. I lived in said block for two or three years. Had an office in said block sixty-nine, (69,) on lots one (1) and (2.)

Interrogatory 4. State if you know w'ether there were any improvements on said lot six (6) when you first knew it.

65 Answer 4. There was not when I first knew it. I know in 1859 and for several years afterwards, that the lot was improved, and had a one-story log building, with a dirt roof on the same, a door and window in front, and a door at the back; it was occupied by Sylvester Hall at one time, General Larimer, and afterwards by Weil & Schruk, as a vinegar and whiskey shop. I think it was occupied by Weil & Schunck in the fall of 1862 or spring 1863; cannot state which. I went east about the 1st of June, and the building was standing there when I left, and was gone about one year, & when I came back it was not there.

Interrogatory 5. State if you know who built that log building on lot six (6.)

Answer 5. The house was built by a man by the name of William G. Preston; it was built in the year 1859.

Interrogatory 6. State if you know who exercised acts of control over said building in 1860, 1861, and 1862?

Answer 6. Sylvester Hall, and in his absence, Gen. W'm Larimer, jr., or his agent.

66 Interrogatory 7. State w'ether you were acquainted with Sylvester Hall; and if so, w'ether he ever resided in Denver; and if so, when?

Answer 7. I was acquainted with Sylvester Hall slightly. He resided in Denver several months in the year 1859 or 1860.

Interrogatory 8. State if you know when the building on said lot six, (6,) now occupied by Mrs. McClelland & Davies, was placed upon said lot.

Answer 8. I cannot state when it was placed there; I returned from the East between the 20th and 30th day of July, 1865.

Interrogatory 9. State w'ether there were any buildings other than the log house on said lot six, (6,) when you left Denver, in 1864?

Answer 9. Nothing but that log building.

Cross-examined by solicitors for respondents:

Cross-interrogatory 1. When did Sylvester Hall leave the city of Denver?

Answer 1. I cannot say.

67 Cross-interrogatory 2. Was he ever in the city of Denver after the year 1859?

Answer 2. I think he was; but cannot state positively. I think he was here in 1860.

Cross-interrogatory 3. When did William G. Preston last reside in the city of Denver?

Answer 3. I cannot state.

Cross-interrogatory 4. Does the building, now occupied by the defendants, stand upon the same ground occupied by the log building built by Preston?

Answer 4. It does not occupy the same grounds that the log building occupied; but it is more on one side of the lot than the log building was; it occupies a part of the same ground.

Cross-interrogatory 5. When you left, in 1864, were there not other improvements on the rear of said lot?

Answer 5. Not to my knowledge.

Cross-interrogatory 6. When you returned, in 1865, was not Mrs. McClelland living where she now lives?

Answer 6. I think she was.

68 RICHARD E. WHITSITT.

Subscribed and sworn to before me this 24th day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony is hereby adjourned until the twenty-eighth day of August, A. D. 1869, at nine o'clock a m.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony is hereby resumed, pursuant to the above adjournment, at my office, in the city of Denver, on this twenty-eight' day of August, A. D. 1869, at 9 o'clock a. m.

Present, Hon. D. D. Belden, solicitor for complainant; and Hon. S. E. Browne, solicitors for defendants.

JAMES MARTIN, a witness produced, was duly sworn by said master, and, on being orally examined by counsel, deposes and testifies as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is James Martin; my age is forty-one years; my residence is Denver City, in the county of Arapahoe, in the Territory of Colorado.

69 Interrogatory 2. Are you acquainted with the complainant and respondents in this cause, or either of them, and how long have you known them respectively?

Answer 2. I am acquainted with the complainant; have been since 1864; have been acquainted with respondents since 1863.

Interrogtory 3. State w'ether or not you are acquainted with lots number six, (6,) seven, (7,) and eight, (8,) in block sixty-nine, (69,) in the east divission of the city of Denver; and if so, how long have you known them?

Answer 3. I am acquainted with said lots; have been acquainted with them since 1863, at the same time that I became acquainted with the respondents.

Interrogatory 4. State what improvements, if any, were on lot eight (8) when you first became acquainted with it in 1863.

Answer 4. There was a log house on lot eight (8) when I first became acquainted with it.

Interrogatory 5. What improvements of buildings, if any, were on lot seven (7) in 1863?

Answer 5. There was a small house on it—frame house.

Interrogatory 6. Who occupied the house on lot seven (7) in 1863?

70 Answer 6. The defendants, Mrs. McClelland and Mrs. Davies?

Interrogatory 7. State if you know how long the defendants continued to occupy said house on said lot seven (7.)

Answer 7. I cannot say positively, but she was occupying said house on said lot seven (7) in the month of August, 1864, when I left here.

Interrogatory 8. State what lot that house, that she occupied in 1863 & 1864, now stands upon.

Answer 8. It is now standing on lot six (6.)

Interrogatory 9. State if you know who occupies the house now.

Answer 9. The defendants.

Interrogatory 10. State if you know when said frame house was moved off from lot seven (7) on to lot six (6.)

Answer 10. I could not state positively. When I left here on the first

day of August, 1864, it was on lot seven, (7;) when I returned to Denver, on the eighteenth day of September, 1865, it was on lot six (6.)

Interrogatory 11. State w'ether you ever collected ground-rent from Mrs. McClelland for any one for either of said lots, six, (6,) seven,
71 (7,) and eight, (8;) and if so, for which of said lots, for whom did you collect it, and for how long a time.

(Objected to by solicitors for defendants.)

Answer 11. Yes, I collected ground-rent from Mrs. McClelland for Luther A Cole, from January the 1st, 1864, to July the 1st, 1864, on lot seven (7.)

JAMES MARTIN.

Subscribed and sworn to before me this 28th day of August, 1869.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony is hereby adjourned until the 30th day of August, A. D. 1869, at 3 o'clock p. m.

JOHN W. WEBSTER.

The taking of testimony is resumed, pursuant to the above adjournment, at my office, in the city of Denver, at 3 o'clock p. m.—present, Hon. D. D. Belden, solicitor for complainant; Hon S. E. Browne, solicitor for defendants.

THOMAS G. ANDERSON, a witness produced was duly sworn by said master, and, on being orally examined by counsel, deposes and testifies as follows:

Interrogatory 1. What is your name, age, place of residence?

72 Answer 1. My name is Thomas G. Anderson; my age is thirty-seven years; my place of residence is Denver City, in the county of Arapahoe and Territory of Colorado.

Interrogatory 2. Are you acquainted with the complainant and respondents in this cause, or either of them; and how long have you known them respectively?

Answer 2. I have been acquainted with complainant about three years, and with the defendants about six or seven years.

Interrogatory 3. State w'ether you are acquainted with the house now occupied by Mrs McClelland and Mrs. Davise on lot six, (6,) in block sixty-nine, (69,) in east division.

Answer 3. I am acquainted with that house.

Interrogatory 4. When did you first know that house, and where did it then stand?

Answer 4. In the year 1861 or 1862, I first knew it. It stood right directly back of the log building occupied by Ashard, as a carpenter shop.

Interrogatory 5. State w'ether you ever moved that building; and if so, when and w'ether more than once.

73 Answer 5. Yes, sir; I have moved it twice. The date of the first moving I cannot state.

Interrogatory 6. State what lot you moved that building onto, the first time you moved it.

Answer 6. I cannot state what lot I moved it onto; I believe that I moved it onto the same lot it now stands on, the first time I moved it; I thought it stood on lots seven & eight, (7 & 8,) provided it now stands on lot six, (6;) at any rate I moved it onto the next lot adjoining the lots that Ashard's building stood on.

Interrogatory 7. If the Ashard building wholly stood on lot eight, (8,) then what lot did you first move the defendants' building onto?

Answer 7. If it stood on lot eight wholly, then I moved it onto lot seven, (7,) for there was only about six feet between the Ashard carpenter shop and the defendants' building, after it was moved, taking the range from the front of the lots back.

Interrogatory 8. Can you state what date you moved the building the second time?

Answer 8. On the seventh day of September, 1865. I can state
74 that positively from the fact that I was farming that year, and I had a diary in which I took everything down, day and date, for that whole year.

Interrogatory 9. State when you moved that building the second time from what spot of ground you moved it.

Answer 9. I moved it from the same spot of ground where I left it first.

Interrogatory 10. In what direction did you move it the second time from where it stood, and how far?

Answer 10. From twenty (20) to thirty (30) feet—I cannot be positive—towards the street, and from one (1) to four (4) feet toward the Ashard building, sidewise.

Interrogatory 11. State w'ether there was any other building on the lot that you moved the defendants' building onto at the time you first moved it.

Answer 11. I don't hardly think there was a building on that lot, but there might have been a building lopped over onto said lot a little; if so, it would have been on the northeast side of that lot. I am pretty sure that I moved it in the year 1863 or 1864, the first time I moved it.

75 Cross-examined by solicitors for defendants:

Cross-interrogatory 1. Does not the house now occupied by defendants stand precisely where you left it when you moved it the second time.

Answer 1. I believe it does.

Cross-interrogatory 2. Does said house not stand from one to four feet nearer to the northeast line of Cole's block than it did at the point to which you moved it the first time?

Answer 2. I believe it does, from the fact that I believe it stands now where I left it when I moved it the last time, but I cannot state positively.

T. G. ANDERSON.

Subscribed and sworn to before me this 30th day of August, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

It is hereby stipulated and *argued* by and between the solicitors for both parties that the street now known as G street was, in 1859, known as D street.

JOHN W. WEBSTER,
Master in Chancery.

76 The taking of testimony is hereby adjourned until the ninth day of September, A. D. 1869, at ten o'clock a. m.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony was resumed, in pursuance to the above adjournment, at my office, in Denver, on this ninth day of September, A. D. 1869, at ten o'clock a. m.—present, Hon. D. D. Belden, solicitor of complainant, and Hon. S. E. Browne, solicitor for defendants.

GEORGE W. MCCLURE, a witness produced, was duly sworn by said master on behalf of complainant; and, on being orally examined by solicitors for both parties, deposed and testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My *age* is George W. McClure; my age is forty-four years; my residence is Denver City, county of Arapahoe, and Territory of Colorado.

Interrogatory 2. Do you know the parties, complainant and respondents, in this cause, or either of them, and how long have you known them respectively?

77 Answer 2. I have known the complainant for about nine years; I am not acquainted with the respondents.

Interrogatory 3. State w'ether you have any knowledge of lot' number six, (6,) seven, eight, and nine, (7, 8, & 9,) in block number sixty-nine, east divission of the city of Denver; and if so, how long have you known them, and state how you became acquainted with them?

Answer 3. I have no knowledge only of three (3) of the lots, number seven, (7,) eight, (8,) and nine, (9.) As far as lot six (6) is concerned, my knowledge is only general. I never had anything to do with the lot six, (6;) lot six (6) joins lot seven (7) on the northeast side; I have known lots seven, (7,) eight, (8,) and nine (9) since 1865, more particularly lot nine, (9;) I had no supervission over lots seven (7) and eight (8) in 1865; in 1866 I made a contract with Mr. Cole, in connection with myself, to build a brick block on lots seven, (7,) eight, (8,) and nine, (9;) I owned lot nine (9) at the time; I had lot' seven, (7,) eight, (8,) and nine (9) all surveyed in the months of August or September, 1866.

Interrogatory 4. State w'ether your were acquainted with a log building which was once occupied by a Mr. Ashard as a carpenter shop; if so, state about how large said building was, how far was it

78 from the northeast line of lot nine, (9,) and what lot was it situated on?

Answer 4. I am acquainted with such a log building; I should think it was about 14x16, but I never measured it; I cannot state exactly its size; I know it was not on lot nine, but was far enough away for an alley-way sufficient for a man to walk through between lot nine (9) and the building; the building was entirely on lot eight (8.)

Interrogatory 5. State, if you can, how far it was from the northeast line of lot nine (9) to the buil'ing?

Answer 5. I could not state exactly the distance, for I never measured it; it might have been about two feet, but cannot state positively. I saw that I could fence lot nine (9) without interfering with the Ashard building.

Interrogatory 6. State w'ether the Ashard building stood sidewise or endwise to Larimer street.

Answer 6. It stood endways, if the roof decides which was the end or side.

Interrogatory 7. State if you are acquainted with the small,

79 frame building now occupied by Mrs. McClelland, on lot six, (6,) in block sixty-nine, (69,) E. D.; and if so, when did you first know it, and where was it then situated?

Answer 7. I am acquainted with that building the same as any other

building; I never had anything to do with it, and could not locate it on any lot when I first knew it.

Interrogatory 8. Did you ever know of that little, frame building that is now situated on lot six (6) being moved; if so, when was it, and what time in the day was it moved, from what place, and to what place was it moved?

Answer 8. From where it was moved I do not know. They were moving, or working on it to move it, in the morning, in the spring of the year 1865; I cannot state the exact time.

Cross-examined by solicitor for defendants:

Cross-interrogatory 1. When you made the survey of the lots seven, (7,) eight, (8,) and nine, (9,) was the frame building now occupied by respondents standing where it now stands?

X-answer 1. It was standing where it now stands.

80 Cross-interrogatory 2. Do you know on what lot said frame building stood in the spring of 1865?

X-answer 2. I do not know.

GEO. W. McCLURE.

Subscribed and sworn to before me this ninth day of September, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony is hereby adjourned until Friday, the twenty-fourth day of September, A. D. 1869, at nine o'clock a. m.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony in the above-entitled cause is resumed, on the part of the complainant, at my office, in Denver City, this twenty-fourth day of September, A. D. 1869, at nine o'clock a. m.—present, Hon. D. D. Belden, solicitor for complainant, and Hon's Geo. W. Perkins and S. E. Browne, solicitors for respondents.

JOHN W. WEBSTER,
Master in Chancery.

GEO. T. CLARK, a witness produced, was duly sworn by said
81 master, and, on being orally examined by solicitors, deposed and testifies as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is George T. Clark; my age is thirty-three years; my residence is in Central City, in the county of Gilpin, and Territory of Colorado.

Interrogatory 2. Are you acquainted with the complainant and respondents in this cause, or either of them, and how long have you known them, respectively?

Answer 2. I am acquainted with the complainant and Mrs. Louisa McClelland, but not with Mrs. Davies.

Interrogatory 3. Where did you live in the years 1861, 1862, 1863, 1864, 1865?

Answer 3. In Denver City.

Interrogatory 4. Were you acquainted with a house on Larimer street, between F & G streets, in Denver City, during any of the years spoken of in your last interrogatories, formerly occupied by Wiel &

Schrwenck as a vinegar factory and liquor store; if yes, state as near as you can the particular location of that building, and when it was so occupied Wiel & Schrwenck?

82 Answer 4. I know such a building; I suppose it was occupied by Wiel & Schrwenk, for their sign was over the door; that building was on the southeast side of Larimer street, in block number sixty-nine (69.) I should think that building was located about from one hundred to one hundred and twenty-five feet from the corner of Larimer & G streets; I do not know on what lot it was located; I think it was occupied by Weil & Schrwenck in the years 1861 and 1862.

Interrogatory 5. In 1863, 1864, and in the fall of 1865, state if you know where the defendants Mrs. McClelland resided?

Answer 5. I think she resided on the southeast side of Larimer street, in block sixty-nine, (69,) and about twenty-five or thirty feet southwest of the building formerly occupied by Wiel and Schrwenck.

Interrogatory 6. Down to how late a period did she reside in the locality you have fixed as her residence?

Answer 6. My impression is that she resided there down to late in the fall of 1865.

Interrogatory 7. Supposing the Wiel and Schwank building
83 to be on lot six, (6,) on what lot would Mrs. McClelland' (the defendant's) residence be that you have spoken of?

Answer 7. I should suppose it to be on lot seven (7) or eight (8.)

Cross-examined by solicitors for defendants:

Cross-interrogatory 1. How near to Larimer street was the house occupied by Mrs. McClelland, in the fall of 1865, situated?

Answer 1. I cannot tell exactly, but I should think from eighteen to twenty-five feet back from the line of the street.

Cross-interrogatory 2. Do you pretend to state, with any degree of certainty, the number of the lot, in block sixty-nine, (69,) on which said house was then located?

Answer 2. I do not.

GEO. T. CLARK.

Subscribed and sworn to before me this 24th day of September, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

84 LOREN W. CUTLER, a witness produced, was duly sworn by said master, and, on being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is Loren W. Cutler; my age is forty-five years; my residence is Denver City, in the county of Arapahoe, in the Territory of Colorado; have resided here nine years.

Interrogatory 2. Were you acquainted with a log-house formerly occupied by Weil and Schwenck as a vinegar factory and liquor store in Denver City? If yes, what year or years did they so occupy said house and where was it located?

Answer. 2. I remember the house; they occupied it as early as 1863. It was located on the southeast side of Larimer street, in block number sixty-nine, (69,) between G & F streets, about from one hundred and thirty to one hundred and thirty-five feet from the corner of G and Larimer streets.

Interrogatory 3. When, if at all, was that house taken down and for what purpose?

85 Answer 3. It was taken down on one of the last days of the month of August, 1864. It was taken down to build block-houses for public use after the Indian scare in the year 1864.

Interrogatory 4. At the time said house was taken down, where did the defendants Louisia McClelland live, and in what house?

Answer 4. She lived in a small house on the lot next adjoining the lot on which the Wiel & Schwank building stood, and towards F street, the building standing back from Larimer street about the center of the lot.

Interrogatory 5. How long prior to the taking down of the Schwank building had the said Lousia McClelland lived continuously in the building you say she lived in at that time?

Answer 5. Two years, at least.

LOREN W. CUTLER.

Subscribed & sworn to before me this 24th day of September, 1869.

JOHN W. WEBSTER,
Master in Chancery.

86 RICHARD E. WHITSITT, a witness produced, was recalled, and being duly sworn by said master, and on being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. Were you acquainted with the custom of the Denver City Town Company and the inhabitants of the district where Denver City stands on November 6th, 1861, and prior thereto, relative to the mode of transfer of the interest the said Town Company had to lots in said city to individuals; if yea, what was that custom?

Answer 1. I was acquainted with the mode said Town Co. transferred their title to lots in said city. They entered the name of the party on the block-book opposite the lots so donated.

Interrogatory 2. Look at the book now shown you, and state what book it is.

Answer 2. It is the block-book of the Denver City Town Company, and now one of the books of record of the county of Arapahoe, and the same one referred to in my last interrogatory.

RICHARD E. WHITSITT.

Subscribed and sworn to before me this 24th day of September, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

87 SCOTT J. ANTHONY, a witness produced, was duly sworn by said master, and, on being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. What is your name, age, and place of residence, occupation?

Answer 1. Scott J. Anthony is my name; my age thirty-eight years; my residence is Denver City, in the county of Arapahoe, in the Territory of Colorado; am deputy recorder & county clerk of the county of Arapahoe.

Interrogatory 2. Look at this book now shown you, and state w'ether it is the same book shown to the last witness, Richard E. Whitsitt; if yea, what book it is, in whose custody and for what purpose kept?

Answer 2. It is the same book shown to Richard E. Whitsitt, and is one of the books of record in the county clerk's and recorder's office, and shows the tran'fers of the Denver Town Company of lots to individuals in East Denver.

Interrogatory 3. Look at said book, and state to whom, if to any one, lot six, (6,) in block sixty-nine, (69,) in the east division of the city of Denver, is therein transferred to, or whose name, if any one, appears in connection with lot six, (6,) in block sixty-nine (69.)

88 (Objected to by solicitors for respondents because title to property cannot be shown by the entries made in said book.)

Answer 3. The book shown the lot to have been tran'ferred by the Denver Town Company to Sylvester Hall.

SCOTT J. ANTHONY.

Subscribed and sworn to before me this 24th day of September, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The solicitor for complainant introduced in evidence a quit-claim deed from W'm G. Preston to Sylvester Hall, filed for record on the ninth day of June, A. D. 1859, and which is hereto attached, marked Exhibit A, and made a part of this proof.

To the introduction of which the solicitors for respondents object, because the execution of said deed is not properly proved, and because it is not properly acknowledged.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony is hereby adjourned until Saturday, the
89 twenty-fifth day of September, A. D. 1869, at eleven o'clock a. m.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony in the above-entitled cause is resumed, on the part of the complainant, at my office in the city of Denver, on the twenty-fifth day of September, A. D. 1869, at eleven o'clock a. m.—present, Hon. D. D. Belden, solicitor for complainant; and Hons. Geo. W. Perkins and Sam'l E. Browne, solicitors for respondents.

JOHN W. WEBSTER,
Master in Chancery.

SCOTT J. ANTHONY, a witness produced, being recalled and duly sworn by said master, on being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. State what your occupation is at the present time.

Answer 1. Deputy county clerk, and recorder of Arapahoe County, Colorado Territory.

Interrogatory 2. State w'ether as such deputy clerk you are or not the proper custodian of the record of deeds and other papers of Arapahoe County.

90 Answer 2. I am.

Interrogatory 3. Look at the book now shown you, and state what book that is, and who has the custody of the same.

Answer 3. It is book A, of Arapahoe County records, and now in my charge.

Interrogatory 4. Look at page' 120 & 121 of said book, and state fully what you find recorded thereon.

Answer 4. I find recorded thereon a quit-claim deed from W'm G. Preston, conveying to Sylvester Hall all his right, title, and interest to lots number fifth and sixth, from the southeast corner of Larimer and D streets, south side, with the buildings thereon erected, dated the eight' day of June, 1859, and recorded on the 9th day of June, 1859, acknowledged before W'm Larimer, j'r, notary public, on the eighth day of June, A. D. 1859.

SCOTT J. ANTHONY.

Subscribed and sworn to before me this 25th day of September, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The solicitors for complainants introduced in evidence the record on page' 120 & 121 of book A, of the Arapahoe County records, as
91 referred to in the deposition last above taken as part of the proofs in this case; to the introduction of which the solicitors for respondents object.

JOHN W. WEBSTER,
Master in Chancery.

The solicitors for complainant also introduced in evidence the block-book of the Denver City Town Company and one of the books of record of Arapahoe County, referred to in the deposition of Richard E. Whitsitt and Scott J. Anthony as a part of the proofs in this cause; to the introduction of which the solicitors for respondents object.

JOHN W. WEBSTER,
Master in Chancery.

JOHN H. MARTIN, a witness produced, was duly sworn by said master, and, on being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is J. H. Martin; my age is forty-three years; my residence is Denver City, county of Arapahoe, and Territory of Colorado; *by* my family is Cheyenne; I claim my residence here.

92 Interrogatory 2. Where were you residing in the years 1862, 1863, 1864, and 1865, respectively?

Answer 2. I resided in Denver City, with the exception of about six months' absence; I was absent from the 14th of December, 1863, to the month of July, 1864.

Interrogatory 3. State w'ether, during the years 1863, 1864, and 1865, you were acquainted with one of the respondents, Lousia McClelland?

Answer 3. I was.

Interrogatory 4. State w'ether, during the years referred to in the last interrogatory, you were acquainted with a lot in Denver City known as lot seven, (7,) in block sixty-nine, (69,) and what improvements, if any, were on said lot during said years.

Answer 4. I was acquainted with the lot during those years; there was a house moved on there by Mrs. McClelland' mother, I think; there was a log-house partially on lot seven (7) and lot eight (8) occupied by Ashard, in the year 1863, I think, as a carpenter shop, and some additions put upon said building by Mrs. McClelland' mother, Mary Davies.

Mrs. Davies rented the lot seven, (7,) and paid me $5 per month for the use of it.

93 Interrogatory 5. State as near as you can the description of the house you say was moved onto said lot seven by Mrs. Davies, when it was so moved onto said lot, when the additions was put to said house?

Answer 5. I think it is a shanty-house, boarded up and down; I cannot tell w'ether it was in 1861, 1862, or 1863; it was one of those years—I think it was in 1862; I cannot tell when the additions were put on said building.

Interrogatory 6. Who, if any one, was living in said house in 1864?

Answer 6. I cannot tell, because I was absent.

Interrogatory 7. State w'ether or not you at any time collected rent for said lot seven (7) of the defendants Mrs. McClelland?

Answer 7. I don't consider that I did; the receipts were always given to Mrs. Davies, her mother.

Interrogatory 8. Prior to the time you left the Territory of Colorado, on the 14th day of December, 1863, did or did not the defendants Mrs. McClelland live in the said house, on lot seven, (7,) and was she not living there when you left?

94 Answer 8. Mrs. McClelland, on the 14th day of December, 1863, was living or staying there with Mrs. Davies.

Interrogatory 9. On the 14th day of December, 1863, do you remember a log-house which had formerly been occupied by Wiel & Schwank, as a vinegar-factory and whiskey-shop, situated in block sixty-nine, (69,) in Denver City.

Answer 9. I recollect there was a log-house there, but who' it was occupied by, I cannot tell; it was used one time as a carpenter-shop, I think.

Interrogatory 10. In what direction, and how far from the house you say was occupied by Mrs. Davies, on lot seven, (7,) was that house just referred to.

Answer 10. I cannot tell you where that house stood, exactly; but if it was toward G street, I cannot tell how far, but I think it stood within 25 feet of said building; I cannot tell exactly; I could not state positively w'ether it stood on lot (5) or lot six, (6,) but I think it stood where Mrs. McClelland' house now stands, and a little back.

Interrogatory 11. After you returned to Denver, in July, 1864, did you collect rent for lot number seven, (7,) in block number sixty-nine (69)?

95 Answer 11. I think not.

Cross-examined by solictors for respondents:

Cross-interrogatory 1. What time was this frame house moved from lot seven (7) to lot six (6)?

(Objected to by solicitors for complainant.)

Answer 1. My impression is that it was moved in the fall or winter of 1864.

(Objected to by solicitors for complainant.)

Cross-interrogatory 2. By whom has it been occupied from thence hitherto?

(Objected to by solicitors for complainant as not being proper cross-examination.)

Answer 2. I suppose by Mrs. Davies and Mrs. McClelland.

(Objected to by solicitors for complainant.)

J. H. MARTIN.

Subscribed and sworn to before me this 25th day of September, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The taking of depositions is hereby adjourned until Tuesday, the thirteenth day of October, A. D. 1869, at 2 o'clock p. m., at my office, by agreement of counsel.

96

JOHN W. WEBSTER,
Master in Chancery.

The taking of depositions is resumed, by agreement of counsel, this thirteenth day of October, A. D. 1869, at 2 o'clock p. m., at my office in Denver City.

JOHN W. WEBSTER,
Master in Chancery.

FREDERICK J. STANTON, a witness produced, was duly sworn by said master, on the part of the complainant, and, being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is Frederick J. Stanton; my age is forty-three years; I reside in the county of Arapahoe, and Territory of Colorado.

Interrogatory 2. In what business, if any, were you engaged on the fifth day of May, 1865, and continuously down to the first day of November, 1865.

Answer 2. I was preparing to publish the Daily Denver Gazette, and commenced publishing it, the first being on the thirteenth May,

97 1865, and continued to publish down to the first day of November, 1865; I was publisher, printer, and proprietor of that paper during that time. From the sixteenth day of May, 1865, to November, 1865, I was city printer for the city of Denver.

(Objected to by solicitors for defendants.)

Interrogatory 3. State w'ether you were, during the time referred to in the last interrogatory, acquainted with James Hall, then probate judge of Arapahoe County, Colorado Territory; state whether during any of said time, between the first of May and the first of November, 1865, any notice by the said James Hall, was published in the Daily Gazette relative to the entry of the town site of Denver City, by Hall, as probate judge, from the United States; if yea, state on what date said notice was first published in said paper.

Answer 3. I was acquainted with James Hall, probate judge, and he published such a notice in the Gazette; first publication was on the 18th day of May, 1865.

Interrogatory 4. Look at the printed notice now shown you, and state what notice it is, and from what paper, if any, it was taken, and by whom (which said notice is hereto attached, marked Exhibit

98 "B," and made a part of this deposition.)

Answer 4. It is the notice referred to in my former answer, of the entry of the Denver town site by Hall; it was taken from the Daily Denver Gazette by myself.

Interrogatory 5. State w'ether there was any other notice similar to the one now shown you, published by James Hall in the Gazette, prior to the 18th day of May, 1865.

Answer 5. No, sir; there was none.

FRED J. STANTON.

Subscribed and sworn to before me this 13th day of October, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The solicitors for complainant now introduced three deeds in evidence, which are hereto attached, marked Exhibits "C," "D," and "E," respectively, and make a part of the proofs in this case, viz: One quit-claim deed from Sylvester Hall, by W'm Larimer, his attorney-in-fact, to John Felter, marked Exhibit "C," one warranty deed from John Felter to Joseph E. Bates, marked Exhibit "D," and one quit-
99 claim deed from Joseph E. Bates to Joseph B. Cofield, marked Exhibit "E;" to all of which the solicitors for respondents objects.

JOHN W. WEBSTER,
Master in Chancery.

The complainant here rests his case, and the taking of further proof closed on his part.

JOHN W. WEBSTER,
Master in Chancery.

The taking of depositions in this cause is hereby adjourned until the twenty-second day of October, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

Pursuant to the above adjournment depositions were taken, on the part of the respondents, in the above-entitled cause, this twenty-second day of October, A. D. one thousand eight hundred and sixty-nine, before John W. Webster, one of the masters in chancery of this court, under and by virtue of an order of reference, to take proofs in the above cause.

Present: Hons. S. E. Browne & Geo. W. Perkins, solicitors for respondents, and Alfred Sayre, esq., solicitor for complainant.

100 PHILIP P. WILCOX, a witness produced by solicitors for respondents, being duly sworn by said master, and, on being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is Philip P. Wilcox; my age is forty-five years; my residence is Franktown, Douglas County, Colorado Territory.

Interrogatory 2. Are you acquainted with the parties, complainant and respondents, in this cause?

Answer 2. I am acquainted with and know both parties well.

Interrogatory 3. Are you acquainted with the location of lot six, (6,) in block sixty-nine, (69,) east division of the city of Denver?

Answer 3. I am acquainted with the location of lot six, (6,) in block sixty-nine (69.) It is fronting of Larimer street, between F & G, in the east division of the city of Denver, on the southeast side of said Larimer street.

Interrogatory 4. Look at the paper now handed you, purporting
101 to be a deed from James Hall to Lousia McClelland, and state what, if anything, you know about execution *its* delivery?

(Objected to by solicitor for complainant.)

Answer 4. Sometime in the year 1865, and after the month of May in that year, I procured for Mrs. Lousia McClelland a deed from James Hall, probate judge of Arapahoe County, to lot six, (6,) in block sixty-nine, (69,) as above described, and delivered said deed to Mrs. Lousia

McClelland, as her attorney. (The paper handed—a copy of which is hereto attached, marked Exhibit 1, and made a part of this report.) I believe it to be the same deed delivered by me to her.

(Objected to by solicitors for complainant.)

Interrogatory 5. Where did you deliver this deed to the respondents, Mrs. McClelland?

(Objected to by solicitors for complainant.)

Answer 5. I delivered it to her in a house on lot six, (6,) in block sixty-nine, (69,) as above described.

(Objected by counsel for complainant.)

Interrogatory 6. Describe the location of that house at that time.

Answer 6. To the best of my knowledge it was standing on the same lot where it now stands and in the same place.

102 Interrogatory 7. Do you or do you not know how long said house had been on said lot prior to that time, and by whom it had been occupied; if so, state the facts with reference thereto within your knowledge?

(Objected to by solicitors for complainant.)

Answer 7. To the best of my knowledge a house stood upon said lot as early as 1862. I may be mistaken as to this. When I returned from California and Idaho in November, 1864, there was a house standing upon said lot, occupied by Mrs. McClelland, her mother, and some of their relatives with her.

(Objected to by solicitors for complainants.)

Interrogatory 8. Has she or has she not continued to occupy a house on said lot from November, 1864, until you delivered her that deed you refer to?

Answer 8. I believe that she so occupied said house on said lot, having seen her almost monthly during that time.

(Objected to by solicitors for complainant.)

Cross-examined by solicitor for complainant:

Interrogatory 1. Do you not know that the house *was* occupied by Mrs. McClelland, on lot six, (6,) in block sixty-nine, (69,) East Denver, was moved to its present site by a soldier or some other person sometime in the spring of 1866?

103 Answer 1. No, sir; I do not.

Interrogatory 2. Do you not know that Thom's G. Anderson, or some one else moved the house referred to in your last interrogatory sometime after August, 1865?

Answer 2. I do not know it of my knowledge.

PHILIP P. WILCOX.

Subscribed and sworn to before me, this 22nd day of October, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The solicitors for respondents then introduced in evidence a certified copy of the United States patent to James Hall, probate judge of Arapahoe County, Colorado Territory, filed for record November 30th, A. D. 1868, at 11½ o'clock a. m., hereto attached, marked Exhibit 2, and made a part of the report; also introduced in evidence a quit-claim deed from Lousia McClelland to Mary Davies, filed for record June 13th, A. D. 1867, at 5½ o'clock p. m., which is hereto attached, marked Exhibit 3, and

made a part of the proofs in this cause; to the introduction in evidence of which the solicitors for complainant objects.

JOHN W. WEBSTER,
104 *Master in Chancery.*

The taking of testimony was adjourned until Monday, the 25th day of October, A. D. 1869, at my office in Denver City, at 2 o'clock p. m.

JOHN W. WEBSTER,
Master in Chancery.

The taking of testimony was resumed at my office, in Denver City, at two o'clock p. m., on the 25th day of October, A. D. 1869—
Present, solicitors for complainant and solicitors for respondents.

JOSEPH C. DAVIDSON, a witness produced, was duly sworn by said master, and, on being orally examined by solicitors for respondents, testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is Joseph C. Davidson; my age is forty-three years; my residence is in Denver City, Arapahoe County, Colorado Territory.

Interrogatory 2. Are you acquainted with the parties complainant and respondents in this cause?

105 Answer 2. I am well acquainted with the respondents; I know the complainant by sight.

Interrogatory 3. Are you acquainted with the location of lot six, (6,) in block sixty-nine, (69,) on which the respondents now reside, in the east divission of the city of Denver?

Answer 3. I know the lot on which the respondents now reside, but do not positively know the number of the lot or block, but I think it to be lot six, (6,) in block sixty-nine, (69,) in East Denver. By reference to the map, can swear positively that it is the lot & block.

Interrogatory 4. Do you know how long Lousia McClelland or Misstress Mary Davies have resided on the same lot on which they now reside?

Answer 4. I do not.

Interrogatory 5. Do you or do you not know at what time the house in which they now resides or any portion of it was first occupied by them or by Mistress McClelland on said lot; if you do know when it was first so occupied, and do know that they did occupy it, when did that knowledge come to you?

(Objected to by solicitors for complainant.)

106 Answer 5. I do not know when they first occupied it; I know that they did occupy it, and I swear positively that they so occupied it on the 30th day of July, A. D. 1864.

Interrogatory 6. By what facts in your recollection, or by what data, if any, you swear positively to this date?

Answer 6. By a letter, headed "Headquarters" District of Colorado, dated Denver, C. T., July 30th, 1864, concerning forced marches, and addressed to me, Capt. J. C. Davidson, First Cavalry of Colorado, commanding Camp Lincoln, Colorado Territory; also, by a letter, headed the same, dated June 12th, 1864, addressed to me, Capt. J. C. Davidson, First Cav., Colorado, commanding troops en route to Fort Lyon, C. T.: also, from a letter from his excellency John Evans, dated June 11th, 1864, 12 p. m., addressed to Capt. Davidson or L'eut. Dunn.

Interrogatory 7. State how far Camp Lincoln was from Denver City.

Answer 7. It was a place called Russellville, on Cherry Creek; I would call the distance 35 miles from Denver.

107 Interrogatory 8. How soon after the receipt of said order, dated July 30th, 1864, did you march to Denver, if you so marched, and how soon did you reach said city of Denver thereafter.

Answer 8. On the date of the order from headquarters. In the afternoon I received it. The same evening, about half-past eight or nine o'clock, I broke camp with my command, except leaving a sufficient guard for my camp equippage. Striking a bee-line, with the balance of my command, I reached Denver on the following morning at daybreak.

Interrogatory 9. Did you or did you not visit the house then occupied by the respondents on that day; if yes, state where you found them and your reasons for said visits.

Answer 9. I did visit them that day; I found them in a framed house, on Larimer street, where they now reside. My reasons for the visit were, I was in search of my family, my wife being a daughter of Mary Davies and a sister to Mrs. McClelland.

Interrogatory 10. State, if you know, what was the occassion of
108 the order directing your march from Camp Lincoln to Denver.

Answer 10. The cause was that they were afraid that they had not sufficient forces in Denver to cope with the Indians.

Interrogatory 11. Do you know where the respondent Mistress McClelland resided from said 30th day of July, 1864, until the month of September, 1865? If you do, state where she so resided.

(Objected to by solicitors for complainant.)

Answer 11. I do know that she has resided during that time in the same place where she resides now.

(Objected to by solicitors for complainant.)

Interrogatory 12. State, if you know, w'ether the house in which she now resides is in whole or in part the same house she resided in in July, 1864?

(Objected to by solicitors for complainant.)

Answer 12. It is.

Interrogatory 13. Has there or has there not been any additions made to said house since that time? If yes, state what those additions were.

(Objected to by solicitors for complainant.)

Answer 13. I think there has been an addition to the house, but I am not certain w'ether it was a wing or shed kitchen.

109 Interrogatory 14. Where you or were you not in the habit of visiting the respondents between the months of July, 1864, and September, 1865; and if yes, how frequently?

(Objected to by solicitors for complainant.)

Answer 14. Very frequently.

(Objected to by solicitors for complainants.)

Interrogatory 15. Do you or do you not know who paid the taxes assessed on said lot in the year 1864 and 1865? If you do know, state who paid them.

(Objected to by solicitors for complainant.)

Answer 15. I do know; it was paid by Lousia McClelland.

Cross-examined by solicitors for complainant:

Cross-interrogatory 1. What time in 1864 were the taxes paid on that lot?

Answer 1. I cannot say.

Cross-interrogatory 2. Might not the house, or a portion of it, now

occupied by Mistress McClelland, have been, some time in the year 1864, standing in another place, on ground in the vicinity of where it now stands?

Answer 2. There might have been a part of it laying in De Lano's lumber , on the corner of Larimer and F street, for anything that I know.

110 Cross-interrogatory 3. Do you know the boundaries of lot six, (6,) in block sixty-nine, (69,) referred to in your direct examination?

Answer 3. I do not know them as a surveyor, but I do know them as an old resident and an old tax-payer.

Interrogatory 4. At any time in the year 1865, could you have pointed out the side-lines, or their locality to lot six, (6,) in block sixty-nine, (69,) referred to?

Answer 4. I *done* so sufficiently correct to build a fence, which stands now.

Cross-interrogatory 5. Do you pretend to say that there is now a fence standing on either of the side-lines of lot six, (6,) in block sixty-nine, (69.)

Answer 5. I pretend to say that one fence built by me as a line fence for said lot still stands as a line fence, as far as I know.

Cross-interrogatory 6. Do you know w'ether that fence built on the line or not?

111 Answer 6. I built the fence according to directions, for the respondents, drawing the line from corner stakes from the alley to the street, and digging post holes by the line.

Cross-interrogatory 7. Where did Mrs. McClelland and Mrs. Davis live just prior to their occupying the place where they now reside?

Answer 7. They were living opposite to where and across the street from where they now reside.

Cross-interrogatory 8. How long had they lived in the place last designated?

Answer 8. They had lived there more than a week.

Cross-interrogatory 9. Just prior to that week, where had they lived, and for how long a time?

(Objected to by solicitors for respondents because irrelevant and incompetent.)

Answer 9. They lived on the corner of E and Larimer streets for more than a week.

Cross-interrogatory 10. State for how long more than a week had they lived on the corner of E & Larimer streets.

(Objected to by solicitors for respondents because irrelevant and incompetent.)

Answer 10. I cannot state.

Cross-interrogatory 11. Do you know where the respondents,
112 or either of them, lived on the 25th day of May, 1864? If yea, state where?

(Objected to by solicitors for respondents.)

Answer 11. As to positive state, I cannot say.

Cross-interrogatory 12. Do you know where they lived any time during the month of May, 1864?

Answer 12. I do.

Cross-interrogatory 13. State where.

Answer 13. In the house where they now reside.

Cross-interrogatory 14. Where did that house stand at that time?

Answer 14. To the best of my knowledge, the house stood then where

it stands now, and I take as a data the time of the first flood of 1864, on the 18th day of May.

Cross-interrogatory 15. Where were you on the 30th day of July, 1864?

Answer 15. I was at Running Creek, and on my way to Denver, as per order dated July 30th, 1864, heretofore referred to.

Cross-interrogatory 16. For how long a time had you been on
113 Running Creek prior to the 30th day of July, 1864, and how far is that point from Denver?

Answer 16. I could not say, as I was continually on the march; I called the distance 38 miles to Denver, but never measured it.

Cross-interrogatory 17. When was you in Denver City the last time prior to the 31st day of July, 1864?

Answer 17. I could not say, as my command was a special command, myself being on staff duty, being specially ordered to take command of stragglers, together with my own Company C, at the same time making returns to my superior as provost marshal, and being responsible as provost marshal, and assuming all the duties and responsibilities of said office, causing me to attend to my official duties in Denver as often or as practicable as possible. During the time I was there I must have visited Denver at least 20 times.

Redirectly examined by solicitors for respondents:

Interrogatory 1. On reflection, from what point did you march to Denver, on the night of July 30th, 1864; Camp Lincoln at Russellville, or camp on Running Creek?

114 Answer 1. I marched from Running Creek; w'ether it was called Camp Lincoln I do not know, or ——

Interrogatory 2. How long a time previous to said date had your command been camped on Running Creek.

Answer 2. For some weeks; I cannot state exactly.

JOE C. DAVIDSON.

Subscribed and sworn to before me the 25th day of October, 1869.

JOHN W. WEBSTER,
Master in Chancery.

The taking of depositions is hereby adjourned until the eighth day of November, A. D. 1869, at eleven o'clock, a. m., at my office in Denver City.

JOHN W. WEBSTER,
Master in Chancery.

The taking of depositions is resumed pursuant to the adjournment, at my office in the city of Denver, at eleven o'clock a. m., on the eight' day of November, A. D. 1869—present, solicitors for complainant and respondents.

WEBSTER D. ANTHONY, a witness produced, was duly sworn by said master, and, on being orally examined by solicitors, deposed and
115 testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. Webster D. Anthony; my age is thirty-two years; my residence is Denver City, Arapahoe County, Colorado Territory.

Interrogatory 2. Are you acquainted with the parties, complainant and respondents, in this cause?

Answer 2. I am acquainted with the parties, complainant and respondents, in this suit.

Interrogatory 3. What, if any, public office did you hold from the year 1865 to the year 1867?

Answer 3. I held the office of county treasurer and collected of Arapahoe County, from, I think, *from* the month of August, 1865, to the 26th of August, 1867.

Interrogatory 4. Examine the papers now presented to you, and which I now offer in evidence, (and which are hereto attached, marked Exhibits "4" & "5," and made a part of this proof;) state w'ether or not you signed them, and if so, who paid the taxes?

116 (Objected to by solicitors for complainant, and the receiving of the paper spoken of in the interrogatory in evidence objected to.)

Answer 4. I signed the papers, but do not know who handed me the money.

(Objected to by solicitors for complainant.)

WEBSTER D. ANTHONY.

Subscribed and sworn to before me this eighth day of November, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

MARY C. DAVIDSON, a witness produced, was duly sworn by said master, and, on being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is Mary C. Davidson; my age is twenty-nine years; my residence is in the city of Denver, county of Arapahoe, and Territory of Colorado.

Interrogatory 2. Are you acquainted with the parties, complainant and respondents, in this cause?

117 Answer 2. I am acquainted with the respondents, but not with the complainant.

Interrogatory 3. When, to your knowledge, did Lousia McClelland first live on the same lot she has resided on during the past summer, to wit, lot number six, (6,) in block number sixty-nine, (69,) in the east division of the city of Denver?

(Objected to by solicitors for complainant.)

Answer 3. In the month of May, A. D. 1864.

(Objected to by solicitors for complainant.)

Interrogatory 4. Where was she living at the time of the first great flood in Denver, in the month May, 1864?

Answer 4. Right where she lives now—in the same place.

Interrogatory 5. Where did she live at the time of the first great Indian scare in Denver?

Answer 5. Right where she does now.

Cross-examined by solicitor for complainant:

Cross-interrogatory 1. Where was Lousia McClelland living in the month of June, 1864, all of said month?

Answer 1. Right where she is now.

118 Interrogatory 2. D' you not know that the house Lousia McClelland now lives in was not standing where it now is the month of June, 1864?

Answer 2. I do not.

Interrogatory 3. Do you not know that the house Lousia McClelland lived in prior to December, 1865, was moved after or in that month?

Answer 3. I do not.

MARY C. DAVIDSON.

Subscribed and sworn to before me this eighth day of November, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

CLARENCE J. CLARK, a witness produced, was duly sworn by said master, and, on being orally examined by solicitors, deposed and testified as follows:

Interrogatory 1. What is your name, age, and place of residence?

Answer 1. My name is Clarence J. Clark; my age is lawful years; my residence is Denver, in the county of Arapahoe, and Territory of Colorado.

119 Interrogatory 2. Are you acquainted with the parties, complainant and respondents, in this cause?

Answer. I know complainant and Mrs. McClelland. I do not know Mrs. Davies.

Interrogatory 3. What, if any, public office did you hold in Denver, county of Arapahoe, and Territory of Colorado, in the year 1868?

Answer 3. Treasurer of Arapahoe County.

Interrogatory 4. Examine the paper now presented to you, and which is offered in evidence, (and which is hereto attached, marked Exhibit "6," and made a part of this proof,) and state w'ether or not you signed it, and who paid the taxes.

(Objected to by solicitors for complainant, and also objected to the receiving of the paper in evidence.)

Answer 4. I signed it, and the whole of it was paid, to', and Mrs. McClellan paid a portion of it, and may have paid the whole of it. I cannot tell.

(Objected to by solicitors for complainant.)

CLARENCE J. CLARK.

Subscribed and sworn to before me this eighth day of November, A. D. 1869.

JOHN W. WEBSTER,
120 *Master in Chancery.*

GEORGE T. CLARK, a witness produced, was duly sworn by said master, and, on being orally examined by solicitors, testified and deposed as follows:

Interrogatory 1. State what public *affairs* you held in Denver City, county of Arapahoe, and Territory of Colorado, in the years 1863 and 1864.

Answer 1. Treasurer of the county of Arapahoe.

Interrogatory 2. Examine the paper now presented to , and which is offered in evidence, (and marked Exhibit "7 & 8," and which is hereto attached and made a part of this proof,) and state what it is, w'ether you signed it, and, if so, who paid the taxes.

(Objected to by solicitors for complainant; also objected to receiving the paper in evidence spoken of in the interrogatory.)

Answer 2. This paper is a county treasurer' tax receipt for the year 1864, and signed by me, and the one for the year 1863 is signed by George T. Clark, D. The signature is of M. M. De Lano, my deputy at that time. This tax receipt of 1864 Mrs. McClelland paid
121 to me herself. I do not know who the tax receipt of 1863.
(Objected to by solicitors for complainant.)

GEO. T. CLARK.

Subscribed and sworn to before me this eight' day of November, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery.

The respondents here rested their case, and the further taking of depositions and proofs in this cause is hereby closed on this eighth day of November, A. D. 1869, at my office, in the city of Denver, county and Territory aforesaid.

JOHN W. WEBSTER,
Master in Chancery.

To the district court of the first judicial district within and for the county of Arapahoe, in the Territory of Colorado.

THE STATE OF KANSAS,
County of Leavenworth, ss:

Before me, the clerk of the district court of the first judicial district in and for the State and county aforesaid, personally appeared William Larimer, jr., who, being by me lawfully sworn, deposed and says that he is now a resident of the State and county aforesaid; that he
122 is the same person whose name is subscribed to the deed hereto attached as the subscribing witness thereto; that he is, and at the time of the date of said deed, on the 8th day of June, A. D. 1859, was, acquainted with William G. Preston, whose name is signed to said deed by the name, style, and description of W. G. Preston; that he saw the said William G. Preston, the grantor in said deed, at the time of the date of said deed, viz, June 8th, A. D. 1859, sign, seal, and deliver said deed by the said name, style, and description of W. G. Preston, and that the said William G. Preston then acknowledge' the same to be his f'ee and voluntary act; and that he, the said Larimer, at the time of the signing, sealing, and delivery of said deed, on the 8th of June, A. D. 1859, subscribing said deed in attestation thereof, in the presence and with the consent of said William G. Preston.

W'M LARIMER, JR.

SEAL OF THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS.

Subscribed in my presence, and sworn to before me, this 13th day of September, A. D. 1869.

H. J. DENNIS,
Clerk of the District Court aforesaid.

THE STATE OF KANSAS,
County of Leavenworth, ss:

123 Be it remembered that, on this 13th day of September, A. D. 1869, before me, the clerk of the aforesaid *the* district court of the first judicial district in and for said State and county, personally appeared William Larimer, jr., who is personally known to me, and who, I know, of my own knowledge, to be the subscribing witness to the deed

hereto attached; and the said William Larimer, jr., was by me lawfully sworn and examined, and his testimony was by me reduced to writing, and was by the said William Larimer, jr., subscribed in my presence; and that the said William Larimer, jr., being so lawfully sworn by me, as above attested, did depose and say that he was a resident of the State and *and* county aforesaid; that he was the same person whose name is subscribed to the deed hereto attached as the subscribing witness thereto; that he is, and, at the time of the date of said deed, June 8th, A. D. 1859, was, acquainted with William G. Preston, the grantor in said deed, who signed the same by the name, style, and description of W. G. Preston; that he saw the said William G. Preston at the time of the date thereof sign, seal, and deliver said deed by the name, style, and description of W. G. Preston; that the said William G. Preston acknowledged the same to him to be his free and voluntary act, and
124 that the said William Larimer, jr., subscribed said deed in attestation thereof, in the presence and with the consent of the said William G. Preston.

In testimony whereof I have hereunto set my hand and the seal of said court, this day and year aforesaid, at Leavenworth, in said county and State.

SEAL OF THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS.

H. J. DENNIS,
Clerk of the Court aforesaid.

Exhibit "A," referred to in the foregoing proofs.

JOHN W. WEBSTER,
Master in Chancery.

This indenture, made this eighth day of June, in the year of our Lord one thousand eight hundred and fifty-nine, between William G. Preston, of Denver City, Kansas Territory, of the first part, and Sylvester Hall, of Pettis County, Missouri, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one hundred and fifty dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party
125 of the second part forever released and discharged therefrom, has remised, released, and sold, conveyed and quit-claimed, and by these presents do' remise, release, sell, convey, and quit-claim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part ha' in and to the following-described lot, piece, or parcel of land, to wit, lots numbers fifth and sixth, from the southeast corner of Larimer & D streets, south side of said Larimer street, with the buildings thereon erected, which is a hewed cottonwood log , 16 by 24 feet, with dirt roof: To have and to hold the same, togethe' with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said pa'ty of the first part hereunto set his hand and seal the day and year first above written.

W. G. PRESTON. [SEAL.]

Signed, sealed and delivered in presence of—
W'M LARIMER, Jr.

126 TERRITORY OF KANSAS,
Mountaina County, ss:

Be it remembered that, on this 8th day of June, A.D. eighteen hundred and fifty-nine, before me, the undersigned, a notary public in and for the county and Territory aforesaid, came William G. Preston, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as part' thereto, and has acknowledged the same to be his act and deed for the purpose therein mentioned.

[SEAL.] W'M LARIMER, JR.,
Notary Public.

(Endorsed:) From W. G. Preston to Sylvester Hall.

This instrument was filed for record on the 9th day of June, A. D. 1859, at 12 o'c., and duly recorded in book A, of city records, at pages 120 and 121.

E. P. STOUT,
Deputy Register of Deeds.

Fees, 1 00, p'd.

EXHIBIT "B."—*John W. Webster, Master in Chancery.*

127 NOTICE.—Notice is hereby given that, on the 6th day of May, 1865, I entered, by direction of the commissioner of the general land office, at the United States land office, in Denver, Colorado, section thirty-three, (33,) and the west half of section thirty-four, (34,) in township three south, of range sixty-eight, (68,) west, under the act of Congress entitled An act for the relief of the citizens of Denver, in the Territory of Colorado, approved May 28th, 1864. Each and every person, or association, or company of persons claiming to be an occupant or occupants, or to have possession, or to be entitled to the occupancy or possession of said lands, or to any lot, block, share, or parcel thereof, must, within ninety days after the first publication of this notice, in person, or by his, her, or their duly authorized agent or attorney, sign a statement, in writing, containing an accurate description of the particular parts or parcels of lands in which he, she, or they claim to be entitled to receive, and declare the same to me at the city hall, Denver, as required by law.

JAMES HALL,
Probate Judge, Arapahoe County, Colorado.

MAY 17.—dtf.

128 EXHIBIT "C," refer'd to in foregoing proofs.
JOHN W. WEBSTER,
Master in Chancery.

This deed, made this 5th day of October, in the year of our Lord one thousand eight hundred and sixty-six, between Sylvester Hall, by his attorney-in-fact, William Larimer, acting under and by virtue of a power attorney given May 27th, 1861, recorded in b'k B, Arapahoe Co. record', page 50, of the county of Leavenworth, and State of Kansas, of the first part, and John Felter, of Denver City, of the County of Arapahoe, and Territory of Colorado, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one thousand ($1,000 00) dollars to the said party of the first

part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed, and quit-claimed, and by these presents doth remise, sell, convey and quit-claim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part hath in and to the following-described lots or parcel of land, situate, lying, and being in the county of Arapahoe, Territory of Colorado, to wit: Lot numbered six, (6,) in block
129 numbered sixty-nine, (69,) situate in Denver City, east division, as p'r survey of E. D. Boyd, in the year 1859: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part, by his attorney-in-fact, hath hereunto set his hand and seal the day and year first above written.

SYLVESTER HALL. [SEAL.]
By W'M LARIMER, JR. [SEAL.]
His Att'y-in-fact.

Signed, sealed, and delivered in presence of—
HENRY CAREY.
J. M. KING.

STATE OF KANSAS, *County of Leavenworth:*

I, Edward Car'oll, clerk of the district court in and for said county, in the State aforesaid, do hereby certify that William Larimer, jr., personally known to me as the person whose name is subscribed to
130 the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as attorney for the said Sylvester Hall, as his free and voluntary act, for the uses and purposes therein set forth.

Geven under my hand and seal of said court, 5th day of October, A. D. 1866.

{ DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS. }

ED. CARROLL,
Clerk of said Court.
By HENRY CARY, *Deputy.*

Quit-claim deed, Sylvester Hall, by att'y, to John F. Felter.

TERRITORY OF COLORADO,
County of Arapahoe:

This deed was filed for record at 12 m. Nov. 3d, 1866, and duly recorded in book 13, page 96, mo.

CHA'S G. CHEEVER, *Recorder.*

No. . . Fees $2 00.

Exhibit "D," refer'ed to in the foregoing proofs.

JOHN W. WEBSTER,
Master in Chancery.

This deed, made this twenty-first day of February, in the year of our

Lord one thousand eight hundred and sixty-seven, between John Felter, of the county of Arapahoe, and Territory of Colorado, of the first
131 part, and Joseph E. Bates, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth:

That the said part' of the first part, for and in consideration of the sum of four thousand five hundred dollars to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledge' has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, forever, all the following-described tract, lot, and parcel of land, situate, lying, and being in the county of Arapahoe, and Territory of Colorado, to wit, lot number six, (6,) in block number sixty-nine, (69,) in the east divission of the city of Denver: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part, the aforesaid tract, lot, and parcel of land unto the said party of the second part, his heirs and assigns,
132 against the claim or claims of all and every person whatever, claiming by, through, or under him, the said party of the first part does and will warrant and forever defend by these presents.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN FELTER. [SEAL.]

Signed, sealed, and delivered in presence of—
ALFRED SAYRE.

The words "claiming by, through, or under him, the said party of the first part," interlined before execution.

Attest: ALFRED SAYRE.

[Revenue stamp four dollars and one-half, affixed.]

TERRITORY OF COLORADO,
County of Arapahoe:

I, Alfred Sayre, a notary public in and for said county, in the Territory aforesaid, do hereby certify that John Felter, personally know' to me as the person whose name is subscribed to the annexed deed, appeared before me this day, in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty-first day of February, A. D. 1867.

[NOTARIAL SEAL.] ALFRED SAYRE,
Notary Public.

133 War'anty deed. John Felter to Joseph E. Bates.

TERRITORY OF COLORADO,
County of Arapahoe:

This deed was filed for record at 11 o'c. a. m., Feb. 22nd, 1867, and duly recorded in book 13, page 504, No.

CHA'S C. CHEEVER, *Recorder.*

$2 00 dues.

Exhibit "E" referred to in the af'regoing proofs.
JOHN W. WEBSTER.

[One dollar revenue stamp affixed and canceled.]

This deed, made this seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between Joseph E. Bates, of Denver City, of the county of Arapahoe, and Territory of Colorado, of the first part, and Joseph B. Cofield of same place, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand ($1,000 00) dollars to the said party of the first part in hand paid by the said party of the second part, the receipt
134 whereof is hereby confessed and acknowledged, hath remised, released, sold, conveyed, and quit-claimed, and by these presents, doth remise, sell, convey, and quit-claim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part hath in and to the following-described land situate, lying, and being in the county of Arapahoe, and Territory of Colorado, to wit:

Lot numbered six, (6,) in block numbered sixty-nine, (69,) in East Denver, as p'r survey of F. J. Ebert, and formerly know' as survey of E. D. Boyd: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JOSEPH E. BATES. [SEAL.]

Signed, sealed and delivered in presence of—

135 TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Charles G. Cheever, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Joseph E. Bates, who is personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of April, A. D. 1869.

[NOTARIAL SEAL.] CHA'S G. CHEEVER,
Notary Public.

Quit-claim deed. Jos. E. Bates to Jos. B. Cofield.

TERRITORY OF COLORADO,
County of Arapahoe:

This deed was filed for record at 11 o'clock a. m., April 17th, 1869, and duly recorded in book 20, page No. 560.

W. D. ANTHONY, *Recorder.*

136 No. . Fees $2 00. P'd.

RESPONDENT'S EXHIBIT.

Exhibit 1, referred to in foregoing testimony.

JOHN W. WEBSTER,
Master in Chancery.

Land patent. United States to James Hall, probate judge in trust, &c.

Filed for record November 30th, A. D. 1868, at 11½ o'clock a. m.

W. D. ANTHONY,
Recorder.

The United States of America to all to whom these presents shall come, greeting:

Certificate No. 261.

Whereas James Hall, probate judge of Arapahoe County, Colorado Territory, in trust for the several use and benefit of the rightful occupants of Denver City, and the bona-fide owners of the improve-
137 ments thereon, according to their respective interest, under the act approved 23d May, 1844, entitled An act for the relief of citizens of towns upon the lands of the United States under certain circumstances, and also of the act approved 28th May, 1864, entitled An act for the relief of the citizens of Denver, in the Territory of Colorado, has deposited in the General Land Office of the United States a certificate of the register of the land office at Denver City, whereby it appears that full payment has been made by the said James Hall, judge as aforesaid, and in trust as aforesaid, according to the provisions of the act of Congress of the 24th of April, 1820, entitled An act, making further provision for the sale of the public lands for section thirty-three and the west half of section thirty-four, in township three south, of range sixty-eight west, "save and except block numbered one hundred and forty-three and lots numbered twenty-nine, thirty, thirty-one, and thirty-two, in block numbered forty-two, and lots numbered twenty-eight and twenty-nine, in block numbered forty-six, east division, Denver City," in the district of lands subject to sale at Denver City, Colorado Territory, containing nine hundred and fifty-seven acres and forty-hun-
138 dredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said James Hall, judge as aforesaid, and in trust as aforesaid:

Now know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents, do give and grant unto the said James Hall, judge as aforesaid, in trust for the several use and benefit of the occupants thereof, according to their respective interests under said act of 23d May, 1844, and 28th May, 1864, and to his successors and assigns, in trust as aforesaid, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said James Hall, judge as aforesaid, in trust for the several use and benefit of the occupants thereof, according to their respective interest, under said acts of 23d May, 1844, and 28th May, 1864, and to his successors and assigns in trust as aforesaid.

In testimony whereof I, Andrew Johnson, President of the
139 United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independance of the United States the nin'ty-second.

By the President.

[SEAL.]

ANDREW JOHNSON,
By FRANK COWAN,
Secretary.

Examined:

J. N. GRANGER,
Recorder of the General Land Office.

Recorded Vol. 1, page 478.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Webster D. Anthony, county clerk and ex-officio recorder, within and for said county, in the Territory aforesaid, do hereby certify that the within and foregoing is a true and correct copy of an instrument of writing, as the same appears of record in book 20, on pages 135, 136, & 137 of Arapahoe County records now in my office.

In testimony whereof I have hereunto set my hand and official seal this 9th day of September, A. D. 1869.

[OFFICIAL SEAL.] WEBSTER D. ANTHONY
Clerk & Recorder.

[Five-cent revenue stamp affixed.]

140 United States patent to James Hall, probate judge. Recorded November 30th, 1868.

Exhibit 2, referred to in the foregoing proofs.

JOHN W. WEBSTER,
Master in Chancery.

This indenture, made this eleventh day of August, A. D. one thousand eight hundred and sixty-five, by and between James Hall, probate judge of Arapahoe County, Colorado Territory, of the first part, and Lousia McClelland, of the second part, witnesseth:

Whereas, by an act of Congress entitled "An act for the relief of the citizens of Denver, in the Territory of Colorado," approved May 28, 1864, the probate judge of said county of Arapahoe was authorized to enter section numbered thirty-three, (33,) and the west half (½) of section numbered thirty-four, (34,) in township numbered three (3) south, of range numbered sixty-eight (68) west of the sixth (6) principal meridian, in trust, as in said act provided; and whereas James Hall, probate judge of said Arapahoe County, hath entered said land
at the land office in Denver City; and whereas the said party of
141 the second part is entitled to the lots and parcels of ground hereinafter described, under the provissions of said act: Now, therefor', in consideration of the premises, and of the sum of two dollars and ninety-five hundret's of a dollar, by the said party of the second part, to *have* paid, the said party of the first part, probate judge of Arapahoe

County, as aforesaid, under and by virtue of the act of Congress aforesaid, doth grant and convey unto the party of the second part the following-described lots and parcels of ground, being a part and portion of the tract of land hereinbefore described, to wit:

Lots numbered fifteen & sixteen, "15 & 16," in block number forty, (40,) lot number six, in block number sixty-nine, in the east division of the city of Denver; also, lot number seven, "7," in block number six, (6,) and lot number five, in block number thirty-five, in the west division of the city of Denver:

To have and to hold the above-described premises unto the said party of the second part, her heirs and assigns, forever.

In witness whereof the said party of the first part, probate judge as aforesaid, hath hereunto set his hand and seal at Denver aforesaid, this the day and year first aforesaid.

JAMES HALL,
Probate Judge.

[Internal revenue stamp of 50c. attached.]

142 TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Omer O. Kent, a notary public in and for the county, in the Territory aforesaid, do hereby certify that James Hall, probate judge, in and for said county, k'own to me to be the person described in, and who executed the foregoing conveyance, and acknowledged that, as such trustee, he signed, sealed, and delivered the said conveyance as his act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal this eleventh day of August, A. D. eighteen hundred and sixty-five.

[OFFICIAL SEAL.] OMER O. KENT,
Notary Public.

Filed for record at 10½ o'c. a. m., August 19th, A. D. 1865.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Webster D. Anthony, county clerk and ex-officio recorder within and for said county, in the Territory aforesaid, do hereby certify that the above and foregoing is a true and correct copy of a deed from
143 James Hall, probate judge, to Lousia McClelland, as the same appears of record in the Arapahoe County records now in my office, in book 7, on page forty-two (42.)

In testimony whereof I have hereunto set my hand and official seal this 9th day of September, A. D. 1869.

[OFFICIAL SEAL.] WEBSTER D. ANTHONY,
Clerk & Recorder.

[Five-cent internal revenue stamp affixed.]

James Hall, P. J. Deed to Lousia McClelland. Rec'd August 19th, 1865.

Exhibit 3, referred to in the foregoing proofs.

JOHN W. WEBSTER,
Master in Chancery.

Quit-claim deed. Lousia McClelland to Mary Davis. Filed for record June 13th, A. D. 1867, at 5½ o'clock p. m.

This deed, made this twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-seven, between Lousia McClelland, of the city of Denver, of the county of Arapahoe, and Territory of Colorado, of the first part, and Mary Davis, of the city of Denver, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand dollars to the said party of the first part in
144 hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath remised, released, sold, conveyed, and quit-claimed, and by these presents doth remise, sell, convey, and quit-claim, unto the said party of the second part, her heirs and assigns, forever, all the right, title, interest, claim, and demand, which the said party of the first part hath in and to the following-described lots, pieces, and parcels of land, situate, lying, and being in the county of Arapahoe, and Territory of Colorado, to wit:

Lot six, (6,) in block sixty-nine, (69;) lot 13, in block 45, in the east division of the city of Denver; also, lot five, (5,) in block thirty-five, (35,) and lot seven, (7,) in block six, (6,) in the west division of the said city of Denver.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, her heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set her hand and seal the day and year first above written.

145 LOUSIA McCLELLAND. [SEAL.]

Signed, sealed, and delivered in presence of—
J. DOWNING.

[Internal revenue of $5 00 attached.]

TERRITORY OF COLORADO,
County of Arapahoe:

I, L. B. France, a notary public, in and for said county, in the Territory aforesaid, do hereby certify that Lousia McClelland, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that she signed, sealed, and delivered the said instrument of writing as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty-second day of May, A. D. 1867.

[NOTARIAL SEAL.] L. B. FRANCE,
Notary Public.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Webster D. Anthony, county clerk and ex-officio recorder, in and for said county of Arapahoe, in the Territory aforesaid, do hereby certify that the above and foregoing is a true and correct copy of a deed from

Lousia McClelland to Mary Davis, as the same is recorded in the
146 records of Arapahoe County, Colorado Territory, in book 14, on pages 145 & 146.

In testimony whereof I have hereunto set my hand and official seal this 9th day of September, A. D. 1869.

[OFFICIAL SEAL.] WEBSTER D. ANTHONY,
Clerk & Recorder.

[Five-cent internal revenue stamp affixed.]

Exhibit "4," referred to in the foregoing testimony.

JOHN W. WEBSTER,
Master in Chancery.

TREASURE'S OFFICE, ARAPAHOE COUNTY,
Oct. 30, 1865.

Received of Lousia McClelland the sum of sixteen & $\frac{57}{100}$ dollars in full for county, Territorial, and school tax, on the following property, for the year 1865:

Lots.	Block.	Division.		
15, 16...	40.....	E. D.	County tax	$11 50
6.....	69.....	"	Ter't "	3 45
			School "	2 62
			Poll "	.....
			Total	$16 57

Valuation of property, $1,150.

W. D. ANTHONY,
Treasurer Arapahoe County.

147 Exhibit "5," referred to in the foregoing testimony.

JOHN W. WEBSTER,
Master in Chancery.

TREASURE'S OFFICE, ARAPAHOE COUNTY,
Jan. 29th, 1867.

Received of Mrs. Lousia McClelland the sum of forty-one $\frac{68}{100}$ dollars, in full for county, Territorial, and school tax, on the following property, for the year 1866:

Lots.	Block.	Division.		
7	6.....	W. D.	County tax	$28 75
5	35.....	"	Territorial tax	8 62
6	69.....	E. D.	School tax	4 31
13	45		Poll tax	.....
			Total	$41 68

Valuation of property, $2,875.

W. D. ANTHONY,
Treasurer Arapahoe County.

Exhibit "6," referred to in foregoing testimony.

JOHN W. WEBSTER,
Master in Chancery.

TREASURER'S OFFICE, ARAPAHOE COUNTY,
Oct. 14, 1868.

148 Received of Mary Davis the sum of one hundred & fifty $\frac{09}{100}$ dollars, in full for county, Territorial, & school tax, on the following property for the year 1868:

Lots.	Block.	Div.		
13.....	45.....	E.	County tax	$46 90
7.....	6.....	W.	Territorial tax	25 80
6.....	69.....	E.	School tax	23 45
5.....	35.....	W.	Poll tax	.....
			Interest on D. P. R. R. bonds, tax	53 94
			Total	150 09

CLARENCE J. CLARK,
Treasurer of Arapahoe County.

Total valuation of property, $4,690.

Exhibit "7," referred to in foregoing testimony.

JOHN W. WEBSTER,
Master in Chancery.

TREASURER'S OFFICE, ARAPAHOE COUNTY,
October 1, 1864.

Received of Mrs. Lousia McClelland thirteen & $\frac{20}{100}$ dollars, in full for county, Territorial, and school tax, on the following property, for the year 1864:

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Lots.	Block.	Divis'n.		
15, 16...	40.....	East.	County tax	$7 55
6.....	69.....	"	Ter'l "	3 76
7.....	6.....	West.	School "	1 89
5.....	35.....	"	Poll "	.....
			Total	13 20

GEO. T. CLARK,
Treasurer Arapahoe County.

Valuation of property, $280.

Exhibit "8," referred to in foregoing testimony.

JOHN W. WEBSTER,
Master in Chancery.

COUNTY TREASURER'S OFFICE, DENVER, COL.,
Nov. 30, 1863.

Received of Mrs. McClelland the sum of five $\frac{45}{100}$ dollars in full for

county, Territorial, school, and poll tax, on the following property, for the year 1863:

Lots.	Block.	Division.		
6	69		County tax	$3 50
			Territorial "	1 05
			School "	88
			Poll "	
150			Total	$5 43

GEO. T. CLARK,
Treasurer Arapahoe County.
D.

Valuation of city lots, $3 50; value of personality, $.

Master's report.

TERRITORY OF COLORADO, *County of Arapahoe, ss:*

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND & MARY DAVIES.

To the Honorable C'ristian S. Eyster, judge of the district court of the first judicial district of the Territory of Colorado, within and for the county of Arapahoe, presiding in chancery, at the May term, A. D. 1869:

In pursuance of an order of this court, made in the above-entitled cause, on the twenty-second day of May, in the year of our Lord
151 one thousand eight hundred and sixty-nine, by which it was referred to one of the masters of this court, residing in the county of Arapahoe, to take proofs on the state of pleading in this cause, and report to this court with all convenient speed, I, the subscriber, one of the masters in chancery of this court, residing in said Arapahoe County, to whom the execution of said order was confided, do hereby certify and report—

That I have taken, as proofs in this cause, on the part of the complainant, the depositions of the following-named witnesses, to wit: William J. Hardin, John M. Butler, Luther A. Cole, Samuel H. Bowman, Charles G. Cheever, Isa'c L. McCormick, Richard E. Whitsitt, James Martin, Thomas G. Anderson, George W. McClure, George T. Clark, Loren W. Cutler, Scott J. Anthony, John H. Martin, and Frederick J. Stanton.

That I have taken, as proofs in this cause, on the part of the respondents, the depositions of the following-named witnesses, to wit: Philip P. Wilcox, Joseph C. Davidson, Webster D. Anthony, Mary C. Davidson, Clarence J. Clark, and George T. Clark.

That, previous to the examination of each witness in the above-entitled cause, they were each respectively sworn by me to testify
152 the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said Joseph B. Cofield, complainant, and the said Lousia McClelland and Mary Davis, respondents, so far as they should be interrogated concerning the same; that

the said depositions were taken at my office, in the city of Denver, in the county of Arapahoe, and Territory of Colorado; that the solicitors for the complainant and respondents were in attendance at the taking of each deposition, and propounded the interrogatories to the witnesses, and the interrogatories so propounded, together with the answers of the witnesses, were written by me, and, after being so written down by me as aforesaid, were read over to each of said witnesses respectively, and that thereupon the same were signed and sworn to by the said witnesses, respectively before me, each oath being administered by me at the place and on the days in each deposition or jurat thereto specified, as will appear by reference to the testimony hereto attached.

I do further certify and report that I have marked all exhibits introduced in evidence in this cause on the part of the complainant as schedules A, B, C, D, and E, which are attached to this report and
153 make a part of the proofs in this cause; that I have marked all exhibits introduced in evidence in this cause on the part of the respondents as schedules "1, 2, 3, 4, 5, 6, 7, and 8," which we attach to this report, and make a part of the proofs in this cause.

And I do further certify and report that the taking of depositions was adjourned from time to time, as specified in the depositions hereto attached, by agreement of solicitors for complainant and respondents; that said adjournments were regular, and made at the time and place in said proofs specified.

All of which is most respectfully submitted.

Denver, Nov. 12th, A. D. 1869.

JOHN W. WEBSTER,
Master in Chancery for the District Court of the First Judicial District, within & for the County of Arapahoe, in the Territory of Colorado.

Master's fees.

Taking depositions & proof, 189 folios, @ 25	$47 25
11 adjournments, per diem under the statute, @ $2 50	27 50
Administering 21 oaths, @ 25	5 25
Issuing 1 subpœna	50
Filing 1 subpœna	15
154 Report to the court	5 00
	$85 65

Received payment.

JOHN W. WEBSTER,
Master in Chancery.

Officer's fees.

Serving subpœna			$6 30
Witnesses' fees, entitled to—			
William J. Hardin,	1 day's attendance		2 50
John M. Butler,	"	"	2 50
Luther A. Cole,	"	"	2 50
Samuel H. Bowman,	"	"	2 50
Charles G. Cheever,	"	"	2 50

Isa'c L. McCormick,	"	"	.....	2 50
Richard E. Whitsitt,	2	"	.....	5 00
James Martin,	1	"	.....	2 50
Thomas G. Anderson,	1 day's attendance		.....	2 50
George W. McClure,	"	"	.....	2 50
George T. Clark,	"	"	.....	2 50
Loren M. Cutler,	"	"	.....	2 50
Ssott J. Anthony,	"	"	.....	2 50
John H. Martin,	"	"	(fees paid).....	2 50
Frederick J. Stanton,	1 day's attendance		.....	2 50
Complainant's costs.....				40 00

155 Witness' fees—respondent:

Philip P. Wilcox, 1 day's attendance, & 30 miles' travel, @ 20	2 50 6 00
Joseph C. Davidson	2 50
Webster D. Anthony.....	2 50
Mary C. Davidson	2 50
Clarence J. Clark	2 50
George T. Clark	2 50
Respondents' costs.....	$21 00

JOHN W. WEBSTER,
Master in Chancery.

And afterwards, to wit, on the twenty-third day of November, A. D. eighteen hundred and sixty-nine, the same being one of the days of the October term of said court A. D. eighteen hundred and sixty-nine, there being present Hon. Christian S. Eyster, judge of said court; Oliver A. Whittemore, clerk of said court; Vincent D. Markham, esq., district attorney of said judicial district; David J. Cook, sheriff of said county; the following proceedings were had and entered of record in said cause in said court, to wit:

156 JOSEPH B. COFIELD *vs.* LOUSIA MCCLELLAND ET AL. } In chancery.

Now, on this day, this cause coming on to be heard upon the master's report of the evidence taken therein, comes the said plaintiff, by Messrs. A. & D. Sayre and H. R. Hunt, his attorneys; and the said defendants, by Messrs. G. W. Perkins and S. E. Browne, also come; and thereupon comes on to be heard the argument of counsel until the hour of adjournment, when the further hearing of argument was postponed until to-morrow the 24th instant.

And afterwards, to wit, on the twenty-fourth day of November, A. D. eighteen hundred and sixty-nine, the same being still of the said October term of said court, the following proceedings were had and entered of record in said court in said cause to wit:

JOSEPH B. COFIELD *vs.* LOUSIA MCCLELLAND ET AL. } In chancery.

Now, on this day, comes the said complainant, by Messrs. A. & D.

157 Sayre and H. R. Hunt, his solicitors, and the said defendants, by Messrs. G. W. Perkins and S. E. Browne, their solicitors, and thereupon this cause coming on to be heard upon the master in chancery's report of the evidence, the argument of counsel was resumed and continued until the hour of adjournment, when the further hearing of argument was postponed until to-morrow, the twenty-fifth instant.

And afterwards, to wit, on the twenty-fifth day of November, A. D. eighteen hundred and sixty-nine, the same being still of the said October term of said court, the following proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND. } In chancery.

Now, on this day comes the said complainant, by Messrs. A. & D. Sayre and H. R. Hunt, his solicitors, and the said defendants by G. W. Purkins and S. E. Browne, their solicitors, and thereupon this cause coming on to be heard upon the master in chancery's report, of the evidence, the arguments of counsel was resumed and continued until the hour
158 of adjournment, when the further hearing of argument was postponed until to-morrow, the twenty-sixth instant.

And afterwards, to wit, on the twenty-sixth day of November, A. D. eighteen hundred and sixty-nine, the same being still of the said October term of said court, the following proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND ET AL. } In chancery.

Now, on this day, comes the said defendants, by their solicitors, Messrs. G. W. Perkins and S. E. Browne, and, on their motion, leave is granted to file in said cause additional evidence. And thereupon came into open court John L. Dailey, and his testimony being taken in said cause in writing, is filed with the report of the evidence taken herein before the master of said court, and thereupon the complainant excepted to the ruling of said in allowing said testimony to be so taken and filed, which said testimony is in words and figures as follows, to wit:

159 And now, on this day, came into open court John L. Dailey, and was by said court first duly sworn, to testify the truth, the whole truth, and nothing but the truth in the case wherein Joseph B. Cofield is complainant, and Lousia McClelland et al., are defendants, and, upon such examinations, deposed as follows: I was, on the 10th day of May, A. D. 1865, a resident of the city of Denver, in the county of Arapahoe, and Territory of Colorado, and was one of the editors and publishers of the Daily Rocky Mountain News, a daily newspaper then published in said county and Territory; that, on the 10th day of May, A. D. 1865, the notice signed by James Hall, probate judge of said county and Territory, was first published in said newspaper on the said 10th day of May, A. D. 18 5, and was so published in the daily of the 22nd day of May, A. D. 1865. He also states that the same notice was published for four consecutive weeks, and four times in the Weekly News, a paper also published in said county, and of which he was then one of the publishers, the first of said publication being made on the said 10th day of

May, A. D. 1865, and that the following is a true copy of said notice to wit:

Notice is hereby given that, on the 6th day of May, 1865, I entered by direction of the Commissioner of the General Land Office, at the
160 United States land office, in Denver, Colorado, section thirty-three, (33,) and the west half of section thirty-four, (34,) in township three (3) south, of range sixty-eight (68) west, under the act of Congress entitled "An act for the relief of the citizens of Denver, in the Territory of Colorado," approved May 28th, 1864. Each and every person, or association or company of persons, claiming to be an occupant or occupants, or to have possession, or to be entitled to the occupancy or possession of said lands, or to any lot, block, share, or parcel thereof, must, within ninety days after the first publication of this notice, in person or by his, her, or their duly authorized agent or attorney, sign a statement in writing, containing an accurate discription of the particular parcel or parts of said land in which he, she, or they claim to have an interest, and the specific right, interest, or estate therein which he, she, or they claim to be entitled to receive, and declare the same to me at the city hall in Denver, as required by law.

JAMES HALL,
Probate Judge, Arapahoe County, Colorado Territory.

May 9th, 1865.

JOHN L. DAILEY.

Sworn to and subscribed before me this 26th d'y of November, A. D. 1869.

OLIVER A. WHITTEMORE, *Clerk.*

161 And afterwards, to wit, on the day and year last aforesaid, the following proceedings were had and entered of record in said cause, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND. } In chancery.

Now, on this day, comes the said complainant, by his solicitors, Messrs. A. & D. Sayre and H. B. Hunt, and, on their motion, leave is granted to file in said cause additional evidence, and thereupon the said complainant brings into court a certified copy from the record of power of attorney referred to in the testimony of W'm Larimer, jr., which is filed withe the report of the evidence taken herein before the master of said court; and thereupon the defendant excepted to the ruling of said court in allowing said testimony to be so taken and filed; which certified copy is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of the Territory
162 of Colorado, sitting within and for the county of Arapahoe, October term, A. D. 1869.

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND & MARY DAVIS. }

Joseph B. Cofield, being first duly sworn, on oath deposes and says:

That he is the complainant in the above-entitled suit; that in said suit and upon the final hearing thereof the said complainant desires to introduce and use in evidence the certified copy, a transcript from the record, of a certain power of attorney from Sylvester Hall to William Larimer, jr., bearing date the 27th day of May, A. D. 1861, which said transcript from the record is hereunto attached; that the original of such transcript is not in the possession of affiant, nor is it in his power to produce the same; that affiant ever since the commencement of this suit has caused diligent inquiry to be made for the original of said power of attorney, and has, by letter and personal inquiry, sought information of the same of all persons likely to have any knowledge of the same, and especially of the said William Larimer, jr.; that he has been
163 unable to obtain any trace of the said original; that the neglect to introduced the said copy or transcript in evidence before the master in chancery by whom the evidence in this cause was taken, was occasioned by this affiant' inquiries for said original, together with his expectations to obtain the same before the proofs were closed by said master; that the said proofs were inadvertantly closed, so far as this complainant is concerned, before a copy and transcript of the record of said original was offered in evidence.

JOSEPH B. COFIELD.

Sworn to and subscribed before me this 26th day of November, A. D. 1869.

OLIVER A. WHITTEMORE, *Clerk.*

Sylvester Hall pow'r att'y to William Larimer, jr.

Know all men by these presents that I, Sylvester Hall, of Pettis County, State of Missouri, do hereby constitute and appoint William Larimer, jr., of Denver City, Colorado Territory, my true and lawful attorney, to act for me and in my name and stead, in the sale of all my property, real estate or otherwise, in Denver City, Colorado
164 Territory, and I do hereby ratify and confirm all (quit-claim interlined,) deeds or transfers made for my property as above, by my said attorney as fully as if I had signed such deeds in my own handwriting. And I do hereby ratify and confirm the same.

In witness whereof I do hereby affix my hand and seal this 27th day of May, 1861.

SYLVESTER HALL. [L. S.]

In presence of—
S. D. FOULKE.

STATE OF MISSOURI, *County of Pettis, ss:*

Be it remembered that, on this 27th May, 1861, personally appeared Sylvester Hall before the undersigned, clerk of the Pettis circuit court who is personally known to me to be the person whose name is subscribed to the foregoing power of attorney, and acknowledged the same to be his act and deed, for the purposes therein mentioned.

Given under my hand and the seal of said court this day and year aforesaid.

[SEAL OF COURT.]

SAM. A. LOWE, *Clk.*
By R. H. KEITH, *D. C.*

Filed for record July 29th, A. D. 1862, 3½ o'c. p. m.

165 TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Webster D. Anthony, county clerk and ex-officio recorder of Arapahoe County, Colorado, do hereby certify that the above and foregoing is a true and correct copy of a certain instrument of writing as is recorded in book "B" of the records of Arapahoe County, on pages 50 & 51. And I furthur certify that the same was filed for record in said office on the 29th day of July, A. D. 1862, at 3½ o'clock p. m., as is shown by the reception-book of my office.

Witness my hand and official seal, at Denver, this 25th day of November, A. D. 1869.

[OFFICIAL SEAL.] WEBSTER D. ANTHONY,
Co. Clerk, &c.

And afterwards, to wit, on the day and year last aforesaid, the following proceedings were had and entered of record in said cause, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND ET AL. } In chancery.

Now, on this day comes the said complainant, by his solicitors,
166 A. & D. Sayre and H. R. Hunt, esq'r's, and the said defendant also comes, by Messrs. G. W. Perkins and S. E. Browne, their solicitors; and thereupon, this cause coming on to be heard upon the master in chancery's report of the evidence taken herein, the argument of counsel was resumed; after the conclusion of which the matter was held under advisement by the court.

And afterwards, to wit, on the twenty-first day of June, A. D. eighteen hundred and seventy, the same being one of the days of the June term of said court, A. D. eighteen hundred and seventy, the following decree was made and entered of record in said cause in said court, to wit:

TERRITORY OF COLORADO,
Arapahoe County, ss:

In the district court of the first judicial district of Colorado Territory, in and for the county of Arapahoe. Of the June term, A. D. 1870.

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND AND OTHERS. } In chancery.

167 And now, on this day, again comes on the said cause for hearing upon the bill & answers, the testimony heretofore taken in said cause, and the report of the master, and the arguments of counsel; and the court being fully advised in the premises, it is ordered, adjudged, and decreed that the said complainant's bill be, and the same is hereby, dismissed at the costs of the said complainant, and that the defendant have execution therefor.

By the court.

C. S. EYSTER, *Judge.*

JUNE 21ST, 1870.

And afterwards, to wit, on the day and year last aforesaid, the following proceedings were had and entered of record in said cause, to wit:

JOSEPH B. COFIELD
vs.
LOUSIA MCCLELLAND ET AL. } In chancery.

And now, a decree having been this day signed by the court in this cause, Alfred Sayre, esq., complainant's solicitors, comes and prays an appeal, which is allowed to him upon the condition that he files
168 herein a bond in the sum of five hundred dollars, conditioned as required by law, and with surety to be approved by the clerk of this court, the same to be filed within three days from this date.

And afterwards, to wit, on the twenty-third day of June, A. D. eighteen hundred and seventy, comes the said complainant and files herein an appeal bond, which said bond is approved by the clerk of this court, and is in words and figures as follows, to wit:

Know all men by these presents that we, Joseph B. Cofield, as principal, and Daniel Witter, as sureties, all of the county of Arapahoe, and Territory of Colorado, are held and firmly bound unto Lousia McClelland and Mary Davis in the penal sum of five hundred dollars, good and lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Witness our hands and seals this twenty-second day of June, in the year of our Lord one thousand eight hundred and seventy.

169 The conditions of the above obligation is such, that whereas the above-named Lousia McClelland and Mary Davis, defendants, did, on the twenty-first day of June instant, in the district court of the first judicial district of the Territory of Colorado, sitting within and for the county of Arapahoe, obtain an order and decree dismissing the bill of complaint of the above-bounden Joseph B. Cofield, complainant, which said decree relates to a freehold, as by said bill of complaint and the proceeding in this suit between the said parties in said court, and in which said suit said decree was rendered, will more fully appear, from which said order and decree the said Joseph B. Cofield has taken an appeal to the supreme court of the Territory of Colorado:

Now, therefor', if the above-bounden Joseph B. Cofield shall duly prosecute his said appeal, and shall pay all costs, interest, and damages accruing to the said Lousia McClelland and Mary Davis by reason of said appeal in case the said order or decree shall be affirmed by the said supreme court, then the above obligation to be void; otherwise to remain in full force and effect.

JOSEPH B. COFIELD. [SEAL.]
170 DANIEL WITTER. [SEAL.]

Approved and filed this 23rd day of June, 1870.
OLIVER A. WHITTEMORE, *Clerk.*

TERRITORY OF *Cofield*,
County of Arapahoe, ss:

I, Oliver A. Whittemore, clerk of the district court of the judicial district of Colorado Territory, within and for the county of Arapahoe, do

hereby certify that the above and foregoing is a true and perfect transcript and copy of all proceedings had and entered of record and all papers filed in said court in a certain cause lately pending in said court, wherein Joseph B. Cofield was complainant and Lousia McClelland and Mary Davis defendants.

In testimony whereof I have hereunto subscribed my name and the seal of said court affixed this 21st day of July, A. D. 1870.

[SEAL OF COURT.] OLIVER A. WHITTEMORE, *Clerk.*

Upon which is endorsed as follows:

"Filed July 23, 1870.

"DAVID W. CRATER, *Clerk.*"

171 And afterwards, to wit, on the twenty-fifth day of July, A. D. 1870, there was filed in the office of the clerk of said supreme court an assignment of errors, which said assignment of errors is in the words and figures following, to wit:

Assignment of errors.

TERRITORY OF COLORADO, *ss:*

In the supreme court of the said Territory of Colorado, July term, A. D. 1870. Chancery.

JOSEPH B. COFIELD, APPELLANT,
vs.
LOUISA MCCLELLAND & MARY DAVIS, appellees.
} To acquire title to lands.

And now comes Joseph B. Cofield, the plaintiff in error in this suit, by Alfred Sayre and H. R. Hunt, his solicitors, and represents unto the said supreme court of said Territory of Colorado, and charges
172 that, in the records and proceedings in the court below in this case, there is manifest error, and exhibits the following assignment of errors therein, that is to say, that—

First. The court below erred in refusing to grant a decree in favor of Joseph B. Cofield, the plaintiff in error, and against the defendants in error, exhibited in accordance with the statements, charges, and prayer of the bill of complaint in said case.

Second. The court below erred in not granting a decree in favor of Joseph B. Cofield, the plaintiff in error, and against Mary Davis, one of the defendants in error, requiring her in a short day to convey the legal title to lot six, in block sixty-nine, in the east division of the city of Denver, Arapahoe County, Colorado Territory, to Joseph B. Cofield, the plaintiff in error, and in case of her default in the premises, decreeing that one of the masters in chancery of the said court should make
173 such conveyance, according to the prayer of the bill of complaint of the said plaintiff in error.

Third. The court below erred in refusing to grant such decree in said case in favor of Joseph B. Cofield, plaintiff in error, and against the said Louisa McClelland and Mary Davis, under the general prayer of the bill of complaint therein exhibited, as the statements, allegations, and charges of the said bill in equity would justify.

Fourth. The court below erred on the final hearing of said case, when it came on to be heard on the bill of complaint and answer, the evidence taken in the case, and the report of the master in chancery, in ordering, adjudging, and decreeing that the bill of complaint of the plaintiff in error, Joseph B. Cofield, be dismissed, and in dismissing the same.

Fifth. The court below erred in dismissing the bill of complaint
174 of Joseph B. Cofield, the plaintiff in error in this suit, the preponderance of the evidence submitted and allowed in the case sustaining the bill, and but a small proportion of the evidence being in conflict with said bill or sustaining the answers of the defendants in error, Louisa McClelland and Mary Davis. By reason whereof the said appellant prays that the said judgment and decree of the court below may be reversed, &c.

H. R. HUNT,
ALFRED SAYRE,
Solicitors for Appellant.

(Which said assignment of errors is indorsed as follows, to wit:)

Supreme court, Colorado Territory, Joseph B. Cofield, appellant, v. Louisa McClelland et al., appellees. Assignment of errors. Filed July 25th, 1870. David W. Crater, clerk. H. R. Hunt & A. Sayre, solicitors for appellant.

175 And afterwards, to wit, and on the twenty-eighth day of July, A. D. 1870, the same being one of the days of the regular term, A. D. 1870, of said supreme court of Colorado Territory—present, Hon. Moses Hallett, chief justice; Hon. Christian S. Eyster and Hon. James B. Belford, associate justices; Ward W. Denniston, deputy U. S. marshal, and David W. Crater, clerk—

Among other the following proceedings were had and entered of record in said cause in said court, to wit:

JOSEPH B. COFIELD, APPELLANT,
vs.
LOUISA MCCLELLAND AND MARY DAVIS,
appellees.

Appeal from district court of Arapahoe.

Now, on this day comes the said parties, by their attorneys, Alfred Sayre and H. R. Hunt, esq'rs for the appellants, and S. E. Brown and George W. Purkins, esq'rs, for the appellees, and this cause came
176 on to be heard, and the same is submitted to the consideration and judgment of the court, and judgement thereon is reserved until another day, and it is ordered by the court that the said appellant file his written argument herein within sixty days from this day, and that the said appellees file their written answer thereto within thirty days thereafter, and that the said appellant file his written reply within twenty days after the expiration of the last-mentioned thirty days.

And afterwards, to wit, on the twenty-third day of July, A. D. 1871, there was filed in the office of the clerk of the supreme court of Colorado Territory a stipulation, which said stipulation is in words and figures following, to wit:

TERRITORY OF COLORADO:

In the supreme court. July term, A. D. 1870.

177 JOSEPH B. COFIELD, APPELLANT,
v.
LOUISA MCCLELLAND & MARY DAVIS, APPELLEES.

Appeal from the district court for Arapahoe County.

It is hereby stipulated and agreed by and between the parties to the above-entitled suit, that the arguments therein may be in writing and filed within such time as the court may order. Also, that the abstracts, argument of error, and briefs required by the rules of the supreme court may be filed with the arguments without objection as to the time of the filing thereof.

Denver, July 23, 1870.

ALFRED SAYRE,
HAMILTON R. HUNT,
Solicitors for Appellant.
S. E. BROWN,
Attorney for Appellees.

178 (Indorsed:) Joseph B. Cofield, appellant, v. Louisa McClelland, appellee. Stipulation. Filed July 23, 1870. David W. Crater, clerk.

And afterwards, to wit, on the second day of August, A. D. 1870, there was filed in the office of the clerk of the supreme court of Colorado Territory, a joinder in error, which said joinder in error is in words and figures following, to wit:

Supreme court, Colorado Territory. Of the July term, A. D. 1870.

LOUISA MCCLELLAND ET AL., APPELLEES,
ats.
JOSEPH B. COFIELD, APPELLANT.

Appeal from district court, Arapahoe County.

179 And now comes the said defendant in error, by S. E. Brown & Geo. W. Purkins, his solicitors, and say that there is no error either in the record and proceedings, or in the giving the judgement aforesaid in manner and form as above assigned; and therefore pray that the said decree may be affirmed and that they may have their costs assigned to them, etc.

S. E. BROWN &
GEO. W. PURKINS,
Sol's for Appellant.

(Indorsed:) Louisa McClelland et al., appellees, ats. J. B. Cofield, appellant. Joinder in error. Filed August 2, 1870. David W. Crater, clerk.

And afterwards, to wit, and on the third day of April, A. D.
180 1871, the same being one of the days of the regular February term, A. D. 1871, of said supreme court of Colorado Territory—

Present, Hon. Moses Hallett, chief justice; and Hon. James B. Belford, assistant justice; O. H. Whittier, deputy U. S. marshal, and David W. Crater, clerk of said court—

Among others the following proceedings were had and entered of records in said cause in said court, to wit:

JOSEPH B. COFIELD, APPELLANT,
vs.
LOUISA MCCLELLAND AND MARY DAVIS, APPELLEES.

Appeal from the district court of Arapahoe County.

Now, on this day this cause come on to be heard, and the same having been heretofore argued by counsel for the said parties and
181 submitted to the consideration and judgment of the court at the present term thereof, and it appearing to the court that there is no error either in the record and proceedings, or in the judgement of the said district court of Arapahoe County, therefore it is ordered by the court that the decree of the said district court be in all things affirmed, and stand in full force and effect; and that the said appellees recover of and from the said appellant their costs and charges in this behalf expended; and that execution issue therefor, and that the opinion of the court, filed herein, be recorded.

And afterwards, to wit, on the day last aforesaid, present as aforesaid, the following proceedings were had in said cause in said
182 court, to wit:

JOSEPH B. COFIELD, APPELLANT,
vs.
LOUISA MCCLELLAND AND MARY DAVIS, APPELLEES.

Appeal from the district court of Arapahoe County.

And now, on this day, comes the said appellant, by Alfred Sayre, esq'r., his attorney, and prays an appeal from the judgment of this court in the above-entitled cause to the Supreme Court of the United States; whereupon it is ordered by the court that said appeal be allowed upon the said appellant giving bond in the penal sum of five hundred dollars with security, to be approved by one of the justices of this court within thirty days from this day.

And afterward, to wit, on the tenth day of April, A. D. 1871, there was filed in the office of the clerk of the supreme court of Colorado Territory an affidavit and bond, which said affidavit and bond
183 are in words and figures following, to wit:

Affidavit.

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of United States.

JOSEPH B. COFIELD, APPELLANT,
vs.
LOUISA MCCLELLAND & MARY DAVIS, APPELLEES.

Joseph B. Cofield, of the county of Arapahoe, and Territory of Colorado, being duly sworn, deposes and says that he is the appellant in the above-entitled appeal; that the above-entiled action is an appeal from a judgement of the supreme court of the Territory of Colorado, affirming the decree of the district court of the first judicial district of the Territory of Colorado, in chancery sitting within and for
184 the county of Arapahoe, against the said Joseph B. Cofield, dismissing his bill of complaint whereon he claimed title to lot number six, (6,) in block number sixty-nine, (69,) in East Denver, county and Territory aforesaid; that lot number six, (6,) is reasonably worth the sum of five thousand dollars.

JOSEPH B. COFIELD.

Sworn and subscribed to before me this tenth day of April, A. D. 1871.

[SEAL OF COURT.] DAVID. W. CRATER,
Clerk of Supreme Court of Colorado Territory.

(Indorsed:) "In U. S. Supreme Court. Joseph B. Cofield vs. Louisa McClelland and Mary Davis. Affidavit. Filed April 10, 1871. David W. Crater, clerk."

Bond.

185 Know all men by these presents that we, Joseph B. Cofield, of the county of Arapahoe and Territory of Colorado, as principal, and Daniel Witter and A. S. Webster, of the county of Arapahoe and Territory aforesaid, as sureties, are held and firmly bound with Louisa McClelland and Mary Davis, of the county of Arapahoe and Territory aforesaid, in the sum of five hundred ($500) dollars, lawful money of the United States of America, to be paid to the said Louisa McClelland and Mary Davis, or to their certain attorney, executors, administrators, or assigns; for which payment, well and truly to made, we bind ourselves, our and each of heirs, executors, and administrators. Sealed with our seals, and dated the tenth day of April, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the said Louisa McCleland and Mary Davis did, on
186 the twenty-first day of June, one thousand eight hundred and seventy, obtain a decree in the district court of the first judicial district of the Territory of Colorado, in chancery sitting within and for the county of Arapahoe, against the said Joseph B. Cofield, dismissing his bill of complaint wherein he claimed title to lot No. 6, in block No. 69, in East Denver, county and Territory aforesaid;

And whereas the said Joseph B. Cofield afterwards appealed fro said

decree of said court to the supreme court of the Territory of Colorado; and whereas the said supreme court did, on the third day of April, A.D. one thousand eight hundred and seventy-one, render a judgement in favor of the said Louisa McClelland and Mary Davis, affirming the decree of the said district court;

And whereas the above-bounden Joseph B. Cofield did, on the
187 day last aforesaid, pray an appeal from the said judgement of the said supreme court to the Supreme Court of the United States;

And whereas the said supreme court of the Territory of Colorado did allow the said appeal upon the above-bounden Joseph B. Cofield giving a bond within thirty days from the date last aforesaid in the penal sum of five hundred dollars with sureties—said bond to be approved by one of the justices of the said supreme court of the Territory of Colorado:

Now, the condition of the obligation is such that, if the said Joseph B. Cofield shall duly prosecute his said appeal, and pay all judgements costs, interest, and damages which may be awarded against him in case the said judgement of the said supreme court of the Territory of Colorado shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and virtue.

JOSEPH B. COFIELD. [SEAL.]
DANIEL WITTER. [SEAL.]
188 A. S. WEBSTER. [SEAL.]

Approved by me this April 10, 1871.

E. T. WELLS,
Associate Justice Supreme Court, Colorado.

(Indorsed:) Joseph B. Cofield vs. Louisa McClelland & Mary Davis. Bond. Filed April 10, 1871. Daniel W. Crater, clerk.

And afterwards, to wit, on the twenty-second day of September, A. D. 1871, there was filed in the office of the clerk of the said supreme court of Colorado Territory a stipulation in the above-entitled cause, which said stipulation is hereto attached and is in the words and figures following, to wit:

189 UNITED STATES OF AMERICA,
Territory of Colorado, ss:

In the Supreme Court of the United States. Of the December term, A. D. 1871.

JOSEPH COFIELD, APPELLANT,
v.
LOUISA MCCLELLAND AND MARY DAVIS, appellees.

Appeal from the supreme court of the Territory of Colorado.

The appellees in the above-entitled cause hereby waive the issuance of any citation to appear in said Supreme Court of the United States, on the first Monday of December next, pursuant to an appeal in the supreme court of the Territory of Colorado, wherein the said Joseph B. Cofield is appellant, and Louisa McClelland and Mary Davis are appellees, and agree to show cause, if any there be, why the decree of the

said supreme court of the Territory of Colorado against the said appellant should not be reversed, and speedy justice should not be
190 done to the parties in that behalf, the same as if said citation had been duly issued and served, and said cause taken there by regular process or writ, reserving all objections except as to the mere issuance and service of a citation and docketing of the case. Dated September 20th A. D. 1871.

S. E. BROWNE, &
THOMAS G. PUTNAM,
Sol's for Appellees.

(Indorsed:) Supreme court. Joseph B. Cofield, appellant, v. Louisa McClelland et al., appellee'. Stipulation. Filed Sept. 22d, 1871. David W. Crater, clerk.

191 TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, David W. Crater, clerk of the supreme court of Colorado Territory, do hereby certify that the above and foregoing is a true and perfect transcript of all proceedings had and entered of record and of the papers filed in said supreme court in a certain cause lately pending therein, wherein Joseph B. Cofield was appellant, and Louisa McClelland and Mary Davis were appellees, and the whole of the original; and that the stipulation last above appearing is the original stipulation filed in my office in the above-entitled cause on the twenty-second day of September, A. D. 1871.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said supreme court, at Denver, in said Territory, this twenty-second day of September, A. D. 1871.

[SEAL.] DAVID W. CRATER, *Clerk.*

192 Fees for transcript: 423 folios, 20c., 84 60; certificate and seal, 1 00—$85 60. Paid by appellant.

(Indorsement on cover:) No. 348. Joseph B. Cofield, appellant, vs Louisa McClelland and Mary Davis. Colorado Terr'y sup. court. Filed 16th October, 1871.

UNITED STATES SUPREME COURT.

JOSEPH B. COFIELD, APPELLANT,
v
LOUISA McCLELLAND, ET AL.

Brief and Points for the Appellant.

This is an appeal from a decree of the Supreme Court of the Territory of Colorado. It was a bill in Equity, filed in the District Court of the first judicial district of said Territory, in and for Arapahoe County, for the recovery of the legal title to lot 6 in block 69 in Denver. The following facts appear in the record not controverted.

1. In May, 1859, a large number of persons associated together under the name of the Denver Town Company, and settled upon, laid out into lots as a town, and built dwelling and business houses on the lands which are now the site of the town of Denver, in said Territory.

2. On the 6th of May, 1865, James Hall, a Probate Judge of the county, entered the town site under the acts of Congress below set forth.

3. On the 10th day of May, 1865, and for four weeks thereafter, the said Judge advertised in a weekly newspaper published at Denver, the fact that he had made said entry, and that all claimants of lots in the town should within ninety days present their claims to him.

4. On the 11th day of August, 1865, he conveyed the lot here in question to Mrs. McClelland as the occupant thereof.

And Mrs. McClelland has conveyed to Mrs. Davis her co-defendant, who is her mother.

5. On the 8th of June, 1859, William G. Preston conveyed the lot to Sylvester Hall, as appears by the deed on page 44 of the record. The Town Company transferred the right of occupancy to lots, not by deeds, but by entering in a book called the Block-book, the name of the party opposite the lot donated. This is one of the books of the County Clerk and Recorder's Office, and shows Hall's name opposite the lot here in question.

6. The plaintiff claims title by divers mesne conveyances which are admitted in the answer of Mrs. McClelland, at folio 20 of the record. Mrs. Davis adopts Mrs. McClelland's answer. [See folio 25.]

The only controverted fact is whether Hall occupied the lot or Mrs. McClelland occupied it, so as to be entitled to the deed of the Probate Judge.

It is neither alleged in the bill, nor denied in the answer, that Hall applied to the Judge for a deed within ninety days from the publication of the notice of the entry of the town site. And the same is true of the defendant.

The statutes upon which the case turns are appended hereto.

First Point.

It appears very clearly from the testimony, that Hall did occupy the lot.

1. William Larimer, Jr., who is shown to have been Hall's attorney in fact, by letter to that effect on page 60 of the record testifies at page 14, that in June, 1859, there was a hewed log house on the lot, built by Preston that spring, and that from June 8, of the same year for nearly three years, he as Hall's agent rented the house and lot to three different persons. The name of one he does not remember, the other

was a German who manufactured vinegar, and the third was a carpenter named Asher.

2. Loren W. Cutler, at page 29, remembers the log house occupied by Wiel & Schwench as a vinegar factory and liquor store in block 69, on Larimer street, between G and F, which was taken down in August, 1864, to build block houses for the public use at the time of the Indian scare. For two years previously the defendant had lived on the adjoining lot.

3. Richard E. Whitsett, at page 22, says he lived two or three years and had an office on the block; he knew of a log house on lot six, occupied by Hall, Larimer, and Wiel & Schruk as a vinegar and whisky shop, and that log house was the only building on the lot when, in 1864, he left the town.

4. Charles G. Cheever, says on page 21, that he owned lot 5 in this block and prior to September, 1865, never saw any improvement on lot six, except the log house.

5. John H. Martin, at pages 32 and 33, says he rented lot 7 in block 69 to the defendant Mrs. Davis, with whom on said lot 7, Mrs. McClelland was living in a house which she had moved on the same.

6. James Martin, on page 24, says there was a small frame house on lot 7, occupied by the defendants in 1863 and down to August, 1864, and the house they then occupied is on lot 6, and he says he collected ground rent for lot 7 from the defendants for Luther A. Cole to July, 1864.

7. Thomas G. Anderson, on page 25, says he twice moved the house now occupied by the defendants on lot 6. If it was on lot 8, he first moved it on lot 7, and this he thinks was in 1863 or 1864, and in September, 1865, he moved it where it now is. He is able to fix the date by his diary.

8. George W. McClure, on page 28, swears that he owned lot 9 in the block, and in 1866 had lots 7, 8 and 9 surveyed

and made a contract with Cole, who owned 7 and 8, to build a block on the three lots. He saw the little frame building now on lot 6 moved there in 1865.

9. George T. Clark, on page 29, shows that the defendants lived on lot 7 down to the fall of 1865.

In opposition to all this testimony, we have the general statement of Mrs. Davidson, a daughter of one and a sister of the other defendant, and her husband.

The testimony shows very clearly that the defendants leased the adjoining lot 7 to the fall of 1865, when, without any pretense of right, they moved the house which they occupied on said lot to the premises in question, and that the plaintiff and his grantors had occupied the lot from the first down at least to 1864.

Second Point.

Hall was entitled to the deed of the Probate Judge. The terms of the act of Congress relative to Denver are very clear. They are that the entry by the Judge is for "the several use and benefit of the rightful occupants of the land and the bona fide improvements thereon."

1. The Denver Town Company, as the bill alleges and the answer clearly admits, settled upon, platted and improved the town site and erected stores, dwellings and other buildings thereon, and otherwise improved the same as a city. It was the original occupant by whose enterprise the town was projected, and for whose benefit the entry by the Probate Judge was made, and according to the usual course of its business it transferred to Hall its right of occupancy, and by entering upon the possession of the lot and holding it for three years he became entitled to the deed from the Judge.

Ricks *v* Reed, 19 Cala., 551, 575.

2. Preston, very early in the history of the town, actually occupied and improved the lot, and unless the action of the Town Company constituted them the original occupant, he

must certainly be so considered, and he is shown to have passed his improvements and occupancy to Hall.

3. Mrs. McClelland had no right to the lot and made no claim thereto. The weight of evidence shows very clearly that she was not in possession of the lot when, in May, 1865, the entry was made. She was not in possession even at the time when, in August, 1865, she obtained the Judge's deed. She does not allege nor show, that she ever filed statement setting forth her right to the lot, and she pretends to no right, except such as she asserts by reason of her naked possession. It is impossible to say that she was the rightful occupant of the lot. And as to the improvements, we have shown that the very decided weight of evidence is that she lived on the adjoining lot till the fall of 1865, and not until then moved her house therefrom to the premises in question; so she was not the bona fide owner of the improvements thereon. And her utmost claim in that behalf is that six years after a large population had settled upon the town site, she was leasing an adjoining lot and living in a small house thereon, and without any authority from any quarter, moves this house upon the premises in question, and becomes "the trespasser of yesterday." In virtue of a possession so acquired, she claims to be in a better position than Hall, who was one of the parties, who, by their previous occupation and industry, had built up the town and made the property valuable. As Mr. Chief Justice Field says, in the case cited above, such could not have been the intention of Congress.

Third Point.

The conveyance of the lot by the Judge of Probate to Mrs. McClelland, passed to her the naked fee, but did not in any way change or impair the right or interests of Hall.

Silver *v* Ladd, 7 Wallace, 219, 228.
See Sec. 2 of the Territorial Act.

Fourth Point.

Hall's failure to sign and deliver to the Judge a written statement, as provided in Section four of the Territorial act, did not bar his action against Mrs. McClelland for the recovery of the title.

1. The entry by the Probate Judge was not duly advertised, because it is not shown that the notice was posted in three public places in the town, as required by Section three of the Territorial act, nor will the presumption be here indulged, that the Judge made such publication, because he is an officer exercising a special, limited and mere statutory authority.

Rex *v* Cole, 1 Cowper, 26.
Rex *v* Liverpool, 4 Burr., 2244.
Rex *v* All Saints, 7 Barn & C., 785.
Graham *v* Whiteley, 2 Dutcher, 254, 262.
Hadlow *v* Hulbut, 15 Pick, 423.
Williams *v* Peyton, 4 Whea., 77.
Salters *v* Tobias, 3 Paige, 338.
Sheldon *v* Wright, 7 Barb., 39.

2. And it was incompetent for the local Legislature, in prescribing the rules and regulations for the execution of the trust as to the disposal of the lots, to bar the right of action for the recovery thereof, as is claimed to have been done in Section 4, for several reasons.

(1.) The act of Congress clearly designated the beneficiaries of the trust to be the occupants of the town site, and this general grant so clearly and definitely expressed, will not be deemed qualified by the subsequent clause providing for the execution of the trust.

Thornhill *v* Hall, 2 Cl. and F., 22, 36.
Strong *v* Lehmer, 10 Ohio St., 93, 98.

(2.) The other construction conducts to an absurdity. If the local Legislature has unlimited power to regulate the disposal of the lots, so that it may direct their conveyance to any person or class, then the provision in the act of Congress that the entry is for the benefit of the rightful occupant and bona fide owner of the improvements, may be effectually nullified by the subordinate body. Under the pretense of executing the trust, the territorial body defeats the trust.

(3.) After the entry, the rightful occupant has an equitable estate in the lot; the act does not pretend to take it from him for the public use, for the act nowhere forfeits it to the public. Nor is it taken by process of law.

Wilkinson *v* Leland, 2 Peters, 657.
Weynehamer *v* The People, 13 N. Y., 378, 393.
Westervelt *v* Gregg, 12 Id., 202, 209.

(4.) Nor can the act be supported here as a statute of limitations. It is not pleaded and it is unreasonable.

Jackson *v* Lamphere, 3 Peters, 280.
Piatt *v* Vattier, 1 McLean, 146, 158.
Price *v* Hopkin, 13 Mich,, 318.

4. But conceding the validity of the provision, it should not be applied to cases like this, between a rightful owner and an intruder who has filed no written statement.

(1.) Such a case was not contemplated by the act. All the sections from the 5th to the 9th, providing three distinct modes of procedure relate to cases between adverse claimants who have filed their written statements. The bar in Section 4, is upon one who has not filed such statement, and is in favor of

one who has done so; while Section 20 provides a forfeiture to the public in case of the entry of the site of an incorporated town by the corporate authorities. Denver is not shown to be incorporated and the title is not held by corporate authority. The act will be strictly construed, for it is highly penal.

(2.) Section 2 expressly provides that the deed of the trustee shall not affect the right of the parties, while section 13 provides that such deed shall not be made until conflicting claims are determined by the judgment of the court. These clauses are to be reconciled, only by holding that the former shall apply where no written statement has been filed by any one.

J. M. WOOLWORTH,
Of Counsel for Appellant.

The statutes upon which the case turns are set out in full at the end hereof.

CHAP. XVII.—An Act for the relief of the citizens of the towns upon the lands of the United States, under certain circumstances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any portion of the surveyed public lands has been or shall be settled upon and occupied as a town site, and therefore not subject to entry under the existing pre-emption laws, it shall be lawful, in case such town or place shall be incorporated, for the corporate authorites thereof, and, if not incorporated, for the judges of the county court for the county in which such town may be situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied, in trust, for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory in which the same is situated: Provided, That the entry of the land intended by this act be made prior to the commencement of the public sale of the body of land in which it is included, and that the entry shall include only such land as is actually occupied by the town, and be made in conformity to the legal subdivisions of the public lands authorized by the act of twenty-fourth April, one thousand eight hundred and twenty, and shall not in the whole exceed three hundred and twenty acres; And, provided, also, That any act of said trustees, not made in conformity to the rules and regulations herein alluded to, shall be void and of none effect: And provided also, That the corporate authorities of the town of Weston, in the county of Platte, State of Missouri, or in the county court of Platte county, in said State,

shall be allowed twelve months, from and after the passage of this act, to enter at the proper land office, the land upon which said town is situate.

Approved, May 23, 1844.

CHAP. XCIX.—An Act for the relief of the citizens of Denver, in the Territory of Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of an act of Congress entitled "An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," approved May twenty-third, eighteen hundred and forty-four, be so extended as to authorize the probate judge of Arapahoe county, in the territory of Colorado, to enter, at the minimum price, in trust for the several use and benefit of the rightful occupants of said land and the bona fide owners of the improvements thereon, according to their respective interests, the following legal subdivisions of land, or such portions thereof as are settled and actually occupied for town purposes by the town of Denver aforesaid, to-wit: Section number thirty-three, and the west half section number thirty-four, in township number three south of range number sixty-eight west of the sixth principal meridian: Provided, however, That there shall be reserved from such sale and entry such blocks or lots in the town of Denver as may be necessary for government purposes, to be designated by the commissioner of the general land office.

SEC. 2. And be it further enacted, That in all respects, except as herein modified, the execution of the foregoing provisions shall be controlled by the provisions of said act of twenty-third May, eighteen hundred and forty-four, and the rules and regulations of the commissioner of the general land office.

Approved, May 28, 1864.

AN ACT

PRESCRIBING RULES AND REGULATIONS FOR THE EXECUTION OF THE TRUST ARISING UNDER THE ACT OF CONGRESS, ENTITLED "AN ACT FOR THE RELIEF OF CITIZENS OF TOWNS UPON LANDS OF THE UNITED STATES UNDER CERTAIN CIRCUMSTANCES."

Be it [enacted] ordained by the Council and House of Representatives of Colorado Territory.

SEC. 1. When the corporate authorities of any town, or the judge or judges of the county court, for any county in this Territory, in which any town may be situated, shall have entered at the proper land office, the land or any part of the land settled and occupied as the site of such town, pursuant to, and by virtue of the provisions of the act of Congress, entitled "an act for the relief of citizens of towns, upon lands of the United States, under certain circumstances," passed May 23d, A. D. 1844, and any amendments that may be made thereto, it shall be the duty of such corporate authorities, or judge, or judges, (as the case may be,) and they are hereby directed and required to dispose of and convey the title to such land, or to the several blocks, lots, parcels, or shares thereof, to the persons hereinafter described, and in the manner hereinafter specified.

SEC. 2. Any such corporate authorities, or judge or judges, holding the title of such lands in trust, as declared in the said act of Congress, shall be a good and sufficient deed of conveyance, to grant and convey the title to each and every block, lot, share or parcel of the same, to the person or persons who shall have, possess, or be entitled to the possession or occupancy thereof, according to his, her, or their several and respective rights or interest in the same, as they existed in law or equity, at the time of the entry of such lands, or to his, her or their heirs or assigns, and when any share or parcel of such land shall be occupied or possessed by one or more persons claiming the same by grant, lease or sale from one or more other persons, the respective rights and interests

of such persons in relation to each other in the same, shall not be changed or impaired by any such conveyance. Every deed to be made by such corporate authorities, or by such judge or judges, pursuant to the provisions of this act, shall be so executed and acknowledged as to admit the same to be recorded.

SEC. 3. Within thirty days after the entry of any such lands, the corporate authorities, or judge or judges entering the same, shall give public notice of such entry, by posting notice thereof in at least three public places in such town, and by publishing such notice in a newspaper printed and published in the county in which such town shall be situated, or, in case there shall not be any newspaper published in such county, then in some newspaper printed and published nearest to such town in this Territory. Such notice shall be published once in each week, for at least three successive weeks, and shall contain an accurate description of the lands so entered, as the same is stated in the certificate of entry, or duplicate receipt for the purchase money thereof, given by the land officers at the time of such entry.

SEC. 4. Each and every person or association, or company of persons, claiming to be an occupant or occupants, or to have possession or to be entitled to the occupancy or possession of such lands, or to any lot, block, share or parcel thereof, shall within ninety days after the first publication of such notice, in person, or by his, her or their duly authorized agent or attorney, sign a statement in writing, containing an accurate description of the particular parcel or parts of land, in which he, she or they claim to have an interest, and the specific right, interest or estate therein, which he, she or they claim to be entitled to receive, and deliver the same to or into the office of such corporate authorities, judge or judges, and all persons failing to sign and deliver such statement, within the time specified in this section, shall be forever barred the right of claiming or recovering such lands,

or any interest or estate therein, or in any part, parcel or share thereof, in any court of law or equity.

SEC 5. In case there shall be adverse claimants to such lands, or to any part, parcel or share thereof, either party may bring a suit in chancery against the adverse claimant or claimants, in the district court of the judicial district, or in any court of competent jurisdiction, and in the county in which the lands shall be situated, or in any county to which the county in which such lands shall be situated, is attached for judicial purposes: Provided, always, That no judge of the district court, or probate judge, who has been an adverse claimant, directly or indirectly, of any portion of the lands embraced within such town, or who is a party to any action brought to determine the right to a conveyance of any portion of the lands within such town, shall entertain, hear or determine any proceeding, interlocutory or final, in any action brought to determine any such claims, by or between any parties whomsoever, but in all such cases, if the cause or proceeding shall be pending in a district court, the judge thereof shall order all papers, with a transcript of the record in the cause, to be transmitted to another judicial district, as in case of change of venue, and if the cause or proceeding shall be pending in a probate court, the judge thereof shall order all papers with a transcript of the record, to be transmitted to the probate court of the nearest county, where the cases complained of do not exist, as in case of change of venue, and the cause shall proceed in the court to which the same be removed, in the same manner as if originally instituted in that court: Provided, also, That the laws applicable to a change of venue, shall apply to actions brought under this act: And, Provided, also, That nothing in this act shall prevent the district judge of the district in which any such lands are situated, from executing any and all conveyances of such lands, pursuant to the determination of such action. Suits brought under the provisions of this act, shall be brought against adverse claimants as de-

fendants, and it shall not be necessary to make the judge or corporate authorities holding the trust, parties thereto, except as provided in section nine of this act. The complainant's bill shall show what interest or estate in the lands in controversy the complainant claims, and defendant shall answer such bill as in cases of chancery. Pleadings and proceedings in such actions shall be as in cases in chancery, except that oral testimony may be introduced upon the trial of the cause.

SEC. 6. Upon the trial of any such action, either party may give, in evidence, the statement mentioned in the fourth section of this act, deposited by the other, or by the person under whom he or she claims, with the corporate authorities, or judge or judges, holding the title to the lands in controversy therein, and the person or persons who shall have first acquired the right to the possession or occupancy of such lands, either in person, or by agent, attorney, servant or tenant, or those claiming under him, her or them, shall in any such action be deemed to have the prior and permanent right to such lands, and any rule of law or equity which would prevent a determination in accordance with such prior right, shall be disregarded in such action. Upon the trial of any such action, the evidence of the witnesses, if not in the form of depositions, shall be reduced to writing, and being certified by the presiding judge, shall be filed with the papers in the cause: Provided, That nothing in this section shall be so construed as to recognize the right of any person or persons, who have virtually abandoned any land held as a town site, to any title therein.

SEC. 7. Appeals and writs of error shall be allowed, and may be taken and prosecuted from the judgments or decrees of the courts, in proceedings under this act, to the supreme court, as in other cases.

SEC. 8. In case suits shall not be brought, as provided in this act, for the purpose of settling or determining any con-

troversy between adverse claimants to any such lands, within sixty days after the expiration of the time for filing the statement, as provided in section four of this act, if the title to such land shall be held by any judge, it shall be the duty of such judge to summon the adverse claimants to appear before him, at a time and place to be mentioned in such notice, and which place shall be within the county in which such land shall be situated, and make their proof and allegations in reference to such adverse claims, at the time and place of the return of such summons. If the same shall have been served as provided in this act, the judges shall, if the parties appear, proceed to hear their proof and allegations, and shall thereupon determine, in writing, the controversy between them. Upon such hearing, the statements of the parties respectively deposited with such judge, as required by the fourth section of this act, shall stand for their pleadings, and either party may use in evidence the statement by the other, or by the person under whom he or she claims. The evidence of the witnesses sworn upon such trial, shall be reduced to writing, and any witness who shall, upon such hearing, wilfully and knowingly testify falsely, shall be deemed guilty of perjury. Any such judge or justice of the peace, may issue subpœnas to compel the attendance of witnesses upon such hearing, and any persons served with such subpœna shall be deemed guilty of contempt of said judge, and may be attached to answer such contempt, and to testify in the case. There shall be no postponement in the hearing of such cases, except for cause. The summons issued by the judge, and all subpœnas issued in such cases, shall be directed and served in the same manner as in actions at law, except that such summons, in case where the person named therein cannot be found, may be served upon the agent or attorney, who shall have filed the statement mentioned in section four of this act. The fees of the officers and witnesses in such cases, shall be the same as for like services in actions of court of record. Either party in any such case may appeal from the determination of any such judge therein, to the

supreme court, in the same manner that a party may appeal from any judgment in an action at law in the district court. If an appeal shall be allowed, the judge shall transmit to the clerk of the supreme court, a transcript of the statements standing for the pleadings in the case, the evidence and the determination of the judge in writing. In case any party lawfully summoned to appear before such judge, as mentioned in this act, shall fail to appear at the time and place mentioned in the summons, he shall be deemed to have waived and relinquished all right, title and interest and estate in the said lands so in controversy, and each and every piece, parcel and share thereof, and shall be forever barred from asserting or claiming any right, title, interest or estate therein.

SEC. 9. If in a case mentioned in section eight of this act, the title to any such lands shall be held by the corporate authorities of any town, such corporate authorities may bring an action in the district court of the judicial district, and in the county in which the lands in controversy shall be situated, or in some county to which such county shall be attached for judicial purposes, to settle and determine such controversy. Such suit shall be commenced on the chancery side of the court, by bill, in the nature of a bill in [of] interpleader, which bill shall set forth a description of the lands claimed by adverse claimants, and the character and extent of the right or interest or estate therein, claimed by each, as the same shall appear by the statements deposited with such authorities, pursuant to section four of this act, and the names of all adverse claimants who shall have filed such statements, and shall pray that the several adverse claimants shall be required to appear in such court and prosecute such claim or be forever barred therefrom. Any claimant to such land, who shall fail to appear and answer such bill, and thus prosecute his claim to the land described in such bill, pursuant to the summons in such case and the practice of the district court, shall be forever barred

of the right to assert any claim or title to the lands in controversy, adverse to the other claimants, their representatives or assigns, elsewhere, or in any court whatsoever. If the adverse claimants to the lands described in the bill, in such case shall appear, they shall respectively answer such bill, and either disclaim any right, title or interest or estate in the land described, or set forth the nature, character and extent of the title, interest or estate which he, she or they respectively claim therein. Issues between such adverse claimants, made by their answers to such bill, may be brought to a hearing, and shall be determined, and such determination may be received by the supreme court, in the same manner and by the same rules of law and evidence, as in other cases mentioned in sections five, six and seven of this act.

SEC. 10. Whenever any summons issued under the provisions of this act, cannot be served upon the person or persons named therein, nor upon the agent or attorney of such person or persons, who shall have filed a statement, as required in the fourth section of this act, and the complainant or judge, as the case may be, shall file an affidavit, as provided in the eighth section of "an act concerning practice in chancery," approved Oct. 4th, 1861, it shall be lawful for the judge or the clerk of the court, as the case may be, to cause publication to be made, as provided in said section of said act concerning practice in chancery, and when such publication shall have been made, the cause shall proceed as if the parties had been personally served with process.

SEC. 11. As soon as may be after the expiration of sixty days from the first publication of the notice, mentioned in the third section of this act, the corporate authorities, judge or judges holding the title to the lands described in such notice, shall make a true statement in writing, containing a true account of all monies by him or them expended in the acquisition of the title, and the administration or execution of the trust to that time, including the monies paid by him or them for the purchase of said lands, all necessary travel-

ling expenses, all monies paid for publishing and posting such notices, and for proof thereof, and for all other necessary and proper expenses incident to such trust, and also a true account of his or their charges for time and services, employed in the business of such trust, to that time. The whole amount of such account for monies and reasonable compensation, shall be charged upon the lands so held in trust, in favor of the trustee, and shall be paid by the several claimants entitled to such lands, in proportion to the several quantities or shares thereof to which they may be respectively entitled.

SEC. 12. Before the corporate authorities, or judge or judges holding any such lands in trust, as aforesaid, shall be required to execute, acknowledge or deliver any deed of conveyance thereof, as hereinbefore mentioned, to any person or persons claiming to be entitled to such deed, such person or persons shall pay or render to him or them the sum of money chargeable on the part thereof, to be conveyed by such deed, according to the statement or account mentioned in the eleventh section of this act, the amount to be determined by the proportion which the quantity of the land to be described in such deed, shall bear to the whole quantity of the land of which it is a part, compared with the whole amount thus charged upon the whole quantity of land, together with the interest on each of the money items of such account, at the rate of twenty-five per centum per annum, from the time when the same account, and also such further sums as shall be a reasonable compensation for preparing, executing and acknowledging such deed, and the fees of the officers taking the acknowledgment thereof: Provided, That no mayor or judge holding such lands in trust, shall be entitled to receive more than fifty cents for a deed containing the description of one lot, block or parcel of land, nor more than five cents for each additional lot, block or parcel of land described in such deed, and no clerk of any incorporated town, shall be entitled to receive more than ten cents for attesting with the

seal of such town, the execution of any deed, by the corporate authorities of such town.

SEC. 13. After the expiration of ninety days from the time of the first publication of the notice mentioned in the third section of this act, the corporate authorities, or judge or judges, holding the title to the lands described therein, shall, upon a reasonable demand or request, and upon the payment or tender to him or them of the monies mentioned in the twelfth section of this act, execute, acknowledge and deliver to each and every claimant, or association, or company of claimants to such lands, or any lot, block, parcel or share thereof, a deed of conveyance thereof, as prescribed in the second section of this act, and according to the second section of this act, and according to the statement made and deposited by him or them, pursuant to the fourth section of this act: Provided, however, That no such deed of conveyance shall be acknowledged or delivered for any part, lot, block, or share of such lands, to which there shall be adverse or contesting claimants, until the controversy thereon shall have been settled or determined, in the manner hereinbefore prescribed, and whenever any such controversy shall have been so settled and determined, the corporate authorities, or judge or judges, shall, upon the like demand or request, and the like payment or tender, and by the like deed of conveyance, convey the lands, or interest or share therein, the right to which shall have been thus ascertained, to the person or persons thereby determined to be entitled to the same.

SEC. 14. When a town site is entered, under the act of Congress mentioned in this act, by the corporate authorities of any incorporated town, deeds shall be made by the mayor or other chief officer of the town, for the time being, under the corporate seal of such incorporated town, and attested by the clerk or register of such town, and if such incorporated town have no seal, then under the scrawl or private seal of said mayor or other chief officer, attested by the clerk or

register, as aforesaid. When the land is entered by the judge or judges of the county court, deeds shall be signed by such judge or judges, under his or their private seal or scrawl.

SEC. 15. In case any judge, who shall have entered any such land under the provisions of the said act of Congress, and thus become the sole trustee thereof, shall be possessed of or entitled to the same, or any part, lot, block or share thereof, according to and by virtue of the provisions of this act, and his claim or right shall not be claimed adversely to him by any person; he shall be and be deemed to be seized and possessed of the title thereto, and the estate therein, to his own use, in fee simple, absolute, free and discharged of such trust, and no conveyance other than the patent of the lands, including the same, shall be necessary to perfect his absolute title thereto. In case such land or interest, or share in such land, so claimed by such judge, shall be claimed by any other person or persons adversely to him, the conflicting claims between him and such other person shall be adjudged by settlement, or action, as hereinbefore prescribed, and in such case of action at law, the issues therein shall be tried before some judge who shall be disinterested, and possessed of competent jurisdiction to hold court for the trial of and to render judgment in such action.

SEC. 16. For all the purposes of determining the rights of adverse claimants to any lands so entered, pursuant to the said act of Congress, the corporate authorities, or judge or judges hereinbefore mentioned, shall be deemed to possess and hold the title to the lands so entered in such trust, from the time of the entry thereof.

SEC. 17. The costs in the actions mentioned in this act, and in proceeding before the judge, as prescribed in the eighth section of this act, shall [be] regulated and recoverable as in other civil actions.

SEC. 18. If the title to any such lands shall be vested in

any judge, such judge shall convey to the people, or to the legal authorities, the land used or laid out by the town authorities, as streets, lanes, avenues, parks, commons and public grounds, within such time as is herein prescribed for making conveyances to individuals.

SEC. 19. Whenever the title to such lands shall be held by the corporate authorities of any town, all lands used, laid out, or designated for public use by such corporate authorities, as streets, lanes, avenues, alleys, parks, commons and public grounds, shall rest in and be held by the corporation absolutely, and shall not be claimed adversely by any person or persons whomsoever, and it shall not be necessary to execute any conveyance for the same, to the corporation or the people of such town.

SEC. 20. Each and every person and association and company of persons who shall be entitled to any lots, pieces or parcels of land, held in trust under the act of Congress aforesaid, by the authorities of any incorporated town, and respecting which there shall be no controversy, shall, within three months after the expiration of the time mentioned for filing statements, pay or tender to the corporate authorities, holding such lands in trust, the sum of money chargeable upon such lot, pieces or parcels of land, together with the interest thereon, and fees for preparing, executing and acknowledging a deed to such lands, and in case of a failure so to do, such person or persons shall be deemed to have relinquished all right, title and interest and estate in such lands, and each and every piece, parcel and share thereof, and shall be forever barred the right of asserting or claiming any right, title, interest or estate therein, and such incorporated authorities, shall thereafter be and be deemed to be seized and possessed of the title thereto, to their own use in fee simple absolute, free and discharged of such trust, and no conveyance other than the patent of the lands including the same, shall be necessary to perfect their absolute title thereto, and any person or persons who shall be entitled to any lots,

parcels or pieces of land, held in trust by any incorporated authorities, as aforesaid, and respecting which there has been adverse claimants, shall, within three months after the final determination of any action between the adverse claimants, respecting such lands, pay or tender to such incorporated authorities, holding such land in trust, the sum of money chargeable upon such lots, pieces or parcels of land, together with the interest and fees for preparing, executing and acknowledging a deed to such lands, and in case of a failure so to do, such person or persons shall be deemed to have relinquished all right, title and interest and estate in such lands, and each and every piece, parcel and share thereof, and shall be forever barred the right of asserting or claiming any right, title, interest or estate therein, and such corporate authorities shall be and be deemed to be seized and possessed of the title thereto, to their own use in fee simple absolute, free and discharged of such trust, and no conveyance other than the patent to the lands including the same, shall be deemed necessary to perfect their absolute title thereto.

SEC. 21. Probate judges are hereby declared to be county judges for the purpose of executing the trust mentioned in said act of Congress.

SEC. 22. This act to take effect and be in force from and after its passage.

Approved, March 11th, 1864.

Supreme Court of the United States.

DECEMBER TERM, A. D. 1872.

No. 122.

JOSEPH B. COFIELD, APPELLANT,

vs.

LOUISA McCLELLAND & MARY DAVIS, APPELLEES.

Brief in behalf of the Appellees.

STATEMENT OF THE CASE.

The original proceeding below was a Bill in Equity, filed in the District Court of the first judicial district of the Territory of Colorado, in and for the county of Arapahoe, to compel a conveyance of the legal title to lot six (6) in block sixty-nine (69) in Denver City, from the defendants to the appellant.

It appears that Denver City was originally laid out by a company or association of persons on the public domain of the United States before the same had been surveyed and became subject to entry. And the company was aided by the privileges of pre-emption, at the minimum price, being secured to settlers and occupants of lots by the general enactment "for the relief of the citizens of the towns upon the lands of the United States under certain circumstances," of May 23d, 1844, (See U. S. Stat. at Large, vol. 5, p. 657,) and the special enactment "for the relief of the citizens of Denver," of the 28th of May, 1864, (see Stat. at Large, v. 13, p. 94,) whereby the Probate Judge of the county was constituted a trustee to enter the land selected for the site

of the town, when the same became subject to entry, and to pass the legal title to the settlers and occupants of lots, under rules and regulations prescribed by the legislative authority of the Territory of Colorado.

The bill alleges the equity in the property to be in the appellant by virtue of prior occupancy and improvements, and it charges collusion and fraudulent combination between the defendants and the ~~probate~~ Probate Judge, the trustee, who conveyed the title to them; but it fails to aver a tender, or to bring into Court the money advanced by the defendants to save the title. The answer fully denies the fraud. Testimony was given on both sides, which is embodied in the record. But whether *all the evidence* introduced at the hearing was inserted in the record does not *affirmatively* appear.

The District Court on the hearing dismissed the bill, and the Supreme Court of the Territory, on appeal, affirmed that decree: hence the appeal to this tribunal.

POINTS IN THE DEFENCE.

1st. The complainant in his bill in chancery bases his claim for relief mainly on the charge of collusion and fraudulent combination between the defendants and the trustee. But the testimony not only wholly fails to sustain the charges of fraud; on the contrary, *the testimony in the record*, introduced by the appellant himself, fully explains and repels the charges of fraud.

2d. The appellant's right of property or pre-emption interest in the lot is predicated on an alleged prior settlement and occupancy of the lot by one W. G. Preston, in June, 1859, and his alleged improvement made thereon, and his conveyance of the same to one Sylvester Hall, on the 8th day of June, 1859, and a subsequent conveyance on the 5th of October, 1866, executed at Leavenworth, Kansas, by one William Larimer, as agent and attorney-

in-fact of Sylvester Hall, to one John Felter, and a conveyance by John Felter, in Feb. 1867, to one Joseph E. Bates, and a conveyance by Bates, in April, 1869, to the appellant.

But it is admitted on behalf of the appellant, that no person claiming to be an occupant, or to be entitled to the possession of the lot under said Preston or Sylvester Hall, ever signed a statement in writing containing a description of the property, and delivered the same to the corporate authorities, as required by the 4th section of the rules and regulations of Colorado Territory, authorized by the statute of the United States of May 23d, 1844. This failure, by the express terms of the enactment, constituted *a bar forever* to the appellant's right or claim.

Besides this, the evidence disclosed in the record as having been introduced by the appellant himself, shows a *clear and undoubted case of virtual abandonment* of the lot or interest therein, within the terms of the *proviso* in the sixth (6) section of the said rules and regulations of Colorado Territory. And this abandonment was so open and notorious, that the defendants took peaceable possession of the lot and built a house thereon, and paid all the taxes and assessments thereon from the time they first became payable in the year 1865, and received the conveyance of the legal title from the trustee as the legal occupant and claimant to the undisputed title and interest therein, under and in accordance with the 13th section of said rules and regulations of Colorado Territory.

3d. The complaint in his bill in chancery (see page 2d of the record) alleges "that *sometime* prior to the 5th of October, 1859, by conveyance duly made and recorded in the records of said county, *and which is to the court here shown*, the said Denver Town Company conveyed the said lot number six, (6,) in said block sixty-nine, (69,) to the said Sylvester Hall," &c. Now, no such conveyance was

made an exhibit in the case, or ever actually shown to the court, or introduced as evidence in any form, and the allegation is tacitly admitted to be without foundation in fact; and the company had no authority for making any such conveyance.

4th. The fifth, sixth, twelfth, and thirteenth sections of the said rules and regulations of Colorado Territory, prescribe the mode of procedure and the requirements in case of conflicting and contesting claims to the title in said lots. But the appellant in his suit below did not even attempt to observe and conform to them.

5th. A person seeking equitable relief, asking that equity be done to him, should do equity himself. The appellant does not pretend that he has made any tender to the defendants, or even shown a willingness and readiness to pay the defendants for their improvements made on the property, or refund to them the money expended by them in paying the assessments and expenses in procuring the conveyance of the legal title, and in the payment of the taxes, all of which would exceed the amount of one thousand dollars at least.

For these and other grounds manifest on the face of the record, we submit most respectfully that the judgment of the Supreme Court of Colorado Territory should be affirmed.

BARTLEY & CASEY,
Attys. for the Appellees.